राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शुक्रवार, 12 अगस्त, 2016 / 21 श्रावण, 1938

हिमाचल प्रदेश सरकार

HIGHER EDUCATION DEPARTMENT

NOTIFICATION

Shimla-2, *the* 6th *August,* 2016

EDN-A-Ka(1)-6/2015.—The Governor, Himachal Pradesh is pleased to order to create the Teaching and Non-Teaching posts for newly taken over Deen Dayal Mahesh Degree College, Sugh-Bhatoli, Distt. Kangra H.P, which has been renamed as Government Degree College, Sugh-Bhatoli, Distt. Kangra, H.P. as under:—

TEACHING STAFF

No.1	Sr. No.	Category	No. of posts	Scale
	1.	Principal	01	Rs.37400-67000+GP 10000
No.II	**Sr. No.**	**Category**	**No. of posts**	**Scale**
	1.	Asstt. Prof English	02	Rs.15600-39100+GP 6000 (For Regular appointee) Rs.15600+6000=21600 PM (for contract appointee)
	2.	Asstt. Prof. History	01	-do-
	3.	Asstt. Prof. Sanskrit	01	-do
	4.	Asstt. Prof. Commerce	02	-do-
	5.	Asstt. Prof. Economics	01	-do-
	6.	Asstt. Prof. Hindi	01	-do-
	7.	Asstt. Prof. Mathematic	01	-do-
	8.	Asstt. Prof. Pol. Science	01	-do-
	9.	Asstt. Prof. Physics	01	-do-
	10.	Asstt. Prof. Chemistry	01	-d0-
	11.	Asstt. Prof. Public Admin.	01	-do-
		Total:	**14**	

Non-Teaching Staff

No.IV	Sr. No.	Category	No. of posts	Scale
	1.	Superintendant Gr-II	01	Rs. 10300-34800 + GP 4800
	2.	Senior Asstt.	01	Rs. 10300-34800+GP 4400
	3.	Clerk	02	Rs.10300+34800+GP 3200 (For Regular appointee) (given after two years of regular services) Rs. 5910+1900=7810 PM (For Contract appointee) Rs.5910-20200+GP 1900 (For initial two years of regular services).
	4.	Assistant Librarian	01	Rs.5910-20200+GP 2400 (for regular employee) Rs.5910+2400=8310/-PM (For contract appointee)
	5.	Library Attendant	01	Rs.5910+20200+GP 1900 PM (for regular appointee) Rs.5910+1900=7810/- Fixed (For Contract appointee).
	6.	Lab. Attendant	02	Rs.5910+20200+GP 1900 PM (for regular appointee) Rs.5910+1900=7810/- Fixed (For Contract appointee).

	7.	Peon	04	Rs.4900+1300=6200 PM (for contract appointee) Rs.4900-10680+GP 1300 (for initial two years of regular services) Rs.4900-10680+GP1650 (Given after two years of regular services)
	8.	Chowkidar	02	-do-
		TOTAL:	**14**	

By order,
Sd/-
Principal Secy. (Hr. Education).

HIGHER EDUCATION DEPARTMENT

NOTIFICATION

Shimla-2, *the* 6th *August,* 2016

EDN-A-Ka (1)-6/2015.—The Governor, Himachal Pradesh is pleased to order the take over Deen Dayal Mahesh Degree College, Sugh-Bhatoli, Distt. Kangra with immediate effect and rename it as Government Degree College, Sugh Bhatoli, Distt. Kangra. H.P.

The Governor, Himachal Pradesh is further pleased to order that Shri Anil Rattan Verma, Principal, Government Degree College, Indora, Distt. Kangra shall hold the additional charge of the post of Principal of newly taken over College i.e. Government Degree College, Sugh-Bhatoli, Distt. Kangra, H.P. in addition to his present duties, without any extra remuneration, till further orders.

The concerned principal is directed to take over the assigned additional charge immediately and take all appropriate steps to ensure smooth functioning of newly taken over Government Degree College.

By order,
Sd/-
Principal Secy.(Hr. Education).

HIGHER EDUCATION DEPARTMENT

NOTIFICATION

Shimla-2, *the* 30th *July,* 2016

EDN-A-Ka (1)-6/2015.—The Governor, Himachal Pradesh is pleased to order to take over Shri Vashisth Sanskrit Vidya Peeth Tungesh, Tehsil Theog, Distt. Shimla, H.P. with

immediate effect with renaming it as Government Sanskrit College, Tungesh, Distt. Shimla. H.P.

By order,
Sd/-
Addl. Chief Secy.(Hr. Education).

आबकारी एवं कराधान विभाग

अधिसूचना

शिमला–2, 11 अगस्त, 2016

संख्याः ई.एक्स.एन.–एफ(10)–20 / 2014.––हिमाचल प्रदेश मूल्य परिवर्धित कर अधिनियम, 2005 (2005 का अधिनियम संख्यांक 12) से संलग्न अनुसूची–'ख' में संशोधन के प्रारूप को, इस विभाग की समसंख्यक अधिसूचना तारीख प्रथम जून, 2016 द्वारा, पूर्वोक्त अधिनियम की धारा 10 के अधीन यथाअपेक्षित के अनुसार, तद्द्वारा संभाव्य प्रभावित होने वाले व्यक्तियों से आक्षेप(पों) / सुझाव(वों) आमंत्रित करने के लिए राजपत्र, हिमाचल प्रदेश में तारीख 2 जून, 2016 को प्रकाशित किया गया था;

और नियत अवधि के भीतर इस निमित्त कोई भी आक्षेप / सुझाव प्राप्त नहीं हुआ है ;

अतः हिमाचल प्रदेश के राज्यपाल, हिमाचल प्रदेश मूल्य परिवर्धित कर अधिनियम, 2005 (2005 का अधिनियम संख्यांक 12) की धारा 10 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, पूर्वोक्त अधिनियम से संलग्न अनुसूची–'ख' में इस अधिसूचना के राजपत्र में प्रकाशन की तारीख से निम्नलिखित संशोधन करते हैं, अर्थात्:–

संशोधन

हिमाचल प्रदेश मूल्य परिवर्धित कर अधिनियम, 2005 से संलग्न अनुसूची 'ख' में विद्यमान प्रविष्टि संख्या 50 के पश्चात् निम्नलिखित नई प्रविष्टि संख्या 50–क अन्तःस्थापित की जाएगी, अर्थात्:–

"50–क	सिम कार्ड	..... ।" ।

आदेश द्वारा,
हस्ताक्षरित / –
सचिव (आबकारी एवं कराधान)।

[Authoritative English Text of this Department Notification No. EXN-F(10)-20/2014 dated 11/08/2016 as required under clause (3) of Article 348 of the Constitution of India.]

EXCISE AND TAXATION DEPARTMENT

NOTIFICATION

Shimla-171002, the 11th August, 2016

No. EXN-F(10)-20/2014.—Whereas, the draft amendment in SCHEDULE-'B' appended to the Himachal Pradesh Value Added Tax Act, 2005(Act No.12 of 2005) was published in the Rajpatra, Himachal Pradesh on 2nd June, 2016 for inviting objection(s)/ suggestion(s) from the

person(s) likely to be affected thereby vide this Department Notification of even number dated 1st June, 2016 as required under section 10 of the Act ibid;

And whereas, no objection(s)/suggestion(s) has been received within the stipulated period in this behalf;

Now, therefore, the Governor, Himachal Pradesh, in exercise of the powers conferred by section 10 of the Himachal Pradesh Value Added Tax Act, 2005 (Act No.12 of 2005) is pleased to make the following amendments in SCHEDULE 'B' appended to the Act ibid, from the date of publication of this Notification in the Rajpatra, Himachal Pradesh, namely:—

AMENDMENT

In SCHEDULE-'B' appended to the Himachal Pradesh Value Added Tax Act, 2005, after the existing entry No.50, the following new entry No. 50-A shall be inserted, namely:—

"50-A	Sim cards	------.".

By order,
Sd/-
Secretary (E & T).

शहरी विकास विभाग

अधिसूचना

शिमला–2, 10 अगस्त, 2016

संख्याः यू0 डी0–ए (3)–3/2015.––हिमाचल प्रदेश के राज्यपाल, हिमाचल प्रदेश नगरपालिका अधिनियम, 1994 की धारा 4 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए प्रस्ताव करते है कि संल्गान अनुसूची में विनिर्दिष्ट क्षेत्र, पूर्वोक्त अधिनियम की धारा 3 की उप–धारा (2) के अधीन नगरपालिका गठित किए जाने के आशय से, नगरपालिका क्षेत्र होंगे जिन्हें उक्त क्षेत्र के बेहतर विकास और सुव्यस्थित वयवस्था के लिए नगर पंचायत शाहपुर, जिला कांगड़ा, हिमाचल प्रदेश के रुप में वर्गीकृत किया जाना है ; उक्त अनुसूची में विनिर्दिष्ट क्षेत्र के निवासियों के नगर पालिका क्षेत्र की प्रस्तावित घोषणा की बाबत, यदि कोई आक्षेप/सुझाव है/हैं, तो उनसे उसे/उन्हें इस अधिसूचना के राजपत्र, हिमाचल प्रदेश में प्रकाशन की तारीख से छह सप्ताह की अवधि के भीतर उपायुक्त, कांगड़ा के माध्यम से, लिखित में, अतिरिक्त मुख्य सचिव (शहरी विकास), हिमाचल प्रदेश सरकार को प्रस्तुत करने की एतद्द्वारा अपेक्षा की जाती है;

उपरोक्त नियत अवधि के भीतर प्राप्त हुए आक्षेप/सुझाव, यदि कोई है/हैं, पर राज्य सरकार द्वारा विचार किया जाएगा और उपरोक्त नियत अवधि के अवसान के पश्चात कोई आक्षेप/सुझाव, जो भी हो, ग्रहण नहीं किया जाएगा ।

आदेश द्वारा,
मनीषा नंदा,
अति0 मुख्य सचिव (शहरी विकास)।

अनुसूची

क्रम संख्या	मोहाल	किता	खसरा नम्बर	क्षेत्र हेक्टेयर
1.	शाहपुर	1878	1 ता 1888 / 1806	138–67–81
2.	चन्दरूण	744	1 ता 689 / 653	71–91–59
3.	झुलाड	630	1 ता 645 / 590	62–98–68
4.	डोलयार	554	1 ता 568 / 533	61–24–16
5.	मंझयार	733	1 ता 694	64–00–24
6.	हांडा	332	1 ता 295	17–51–70
7.	गोरड़ा	49	1209/1546/1210, 1547/1210, 1548/1210,1211,1212, 1549/1213,1550/1213, 1214 to1217 1222 to1224, 1551/1252,1552/1252, 1477/1254,1503/1476, 1504/1476,1229,1230, 1518/1288/1261 1519/1288/1261, 1520/1288/1261, 1287/1261,1248/1232, 1247/1232,1259/1233, 1258/1233,1501/1241, 1502/1241,1553/1242, 1554/1242,1243, 1507/1485,1508/1485, 1482/1257,1483/1257, 1484/1257/1478/1257, 1479/1257,1505/1480, 1521/1506/480, 1522/1506/480, 481/1257,1245,1246	06-68-27
			कुल क्षेत्र . .	**423–02–45 हेक्टेयर**

[*Authoritative English text of the Department Notification No. UD-A(3)-3/2015, dated 10.8.2016 as required under clause (3) of Article 348 of the Constitution of India.*]

URBAN DEVELOPMENT DEPARTMENT

NOTIFICATION

Shimla-2, the 10th August, 2016

No. UD-A(3)-3/2015.—In exercise of the powers conferred by section 4 of the Himachal Pradesh Municipal Act, 1994, the Governor of Himachal Pradesh is pleased to propose that the areas specified in the appended Schedule shall be Municipal area in order to constitute a Municipality under sub-section (2) of section 3 of the Act ibid, to be classified as Nagar Panchayat, Shahpur, District Kangra, Himachal Pradesh for the better development and improved arrangement in the said area;

The inhabitants of the area specified in the said Schedule are hereby called upon to submit their objection(s)/suggestion(s), if any, to the proposed declaration of municipal area to the Addl. Chief Secretary (Urban Development) to the Government of Himachal Pradesh in writing through the Deputy Commissioner, Kangra within a period of six weeks from the date of publication of this notification in the Rajpatra, Himachal Pradesh.

The objection(s)/suggestion(s), if any, received within above stipulated period shall be taken into consideration by the State Government and after the expiry of above stipulated period, no objection(s)/suggestion(s) whatsoever shall be entertained.

By order,
MANISHA NANDA
Addl. Chief Secretary (U.D.)

"**Schedule"**

Sl. No.	Mohal	Kita.	Khasra No.	Area in Hactare
1.	Shahpur	1838	1 to 1888/1806	138-67-81
2.	Chandroon	744	1 to 689/653	71-91- 59
3.	Jhular	630	1-to-645/590	62-98-68
4.	Dolyar	554	1-to-568/533	61-24-16
5.	Manjhyar	733	1-to-694	64-00-24
6.	Handa	322	1-to-295	17-51-70
7.	Gorad	49	1209,1546/1210,1547/1210, 1548/1210,1211,1212, 1549/1213,1550/1213, 1214 to1217 1222 to1224, 1551/1252,1552/1252, 1477/1254,1503/1476, 1504/1476,1229,1230, 1518/1288/1261	06-68-27

			1519/1288/1261, 1520/1288/1261,1287/1261, 1248/1232,1247/1232, 1259/1233,1258/1233, 1501/1241,1502/1241, 1553/1242,1554/1242,1243, 1507/1485,1508/1485, 1482/1257,1483/1257, 1484/1257,1478/1257, 1479/1257,1505/1480, 1521/1506/480, 1522/1506/480, 481/1257,1245,1246	
			Total Area. .	**423-02-45 Hactare**

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla, the 10th *August,* 2016

No. Shram (A) 6-2/2016 (Awards).—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act,1947, the Governor Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court Shimla on the website of the Department of Labour & Employment Government of Himachal Pradesh:—

Sr.No.	Case No:	Title of the Case	Date of Award
1.	07/2013	Sh. Nand Lal V/s M/S Abott Health Care Pvt. Ltd. Baddi District Solan, H.P.	10
2.	200/2002	Sh. Narpat Ram V/s The Executive Engineer, H.P. State Electricity Board, Division Arki District Solan, H.P.	10
3.	89/2010	Himachal Pradesh Government Press Workers Union through its President Pratap Singh Thakur S/O Late Shri Hari Chand, Village Bagora, P.O. Poaboo, District Shimla, H.P. V/S The Controller, Printing & Stationery Department H.P. Shimla-5, H.P.	10
4.	36/2014	Ms. Jaiwanti V/S Kasturba Gandhi National Samark Trust Nidhi, Head Office kasturba Gram Indore, Madhya Pradesh & Ors.	10
5.	61/2015	Shri Narain Singh V/S The XEN, HPPWD, Saqngrah District Sirmour, H.P.	10

6.	102/2006	Shri Shyam Lal V/S Municipal Councial Poanta Sahib, District Sirmour, H.P.	10
7.	43/2012	Shri Vinod Kumar V/S Factory Manager, Ind Swift Ltd. parwanoo District solan, H.P.	10
8.	45/2013	Shri Amrik Singh & Ors. V/s M/S Maja Personal care, Barotiwala, Tehsil Nalagarh District Solan, H.P.	10
9.	37/2013	Shri Lakshmikant Tiwari V/S M/S Carlsberg India Pvt. Ltd. Village Tokyon, Tehsil Poanta Sahib District Sirmour, H.P.	10

By order,
Sd/-
Pr. Secretary (Lab. & Emp.)

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P).

Ref. No. 7 of 2013.
Instituted on. 27.2.2013.

Decided on 28.7.2016.

Nand Lal S/o Shri Gurbant R/o Village Gharer, P.O Ekhoo, Tehsil Baddi, District Solan, HP.
. .*Petitioner.*

Vs.

The General Manager, Human Resources, M/s Abott Health Care Pvt. Ltd., Village Bhatuali Khurd, Sai Road Baddi, District Solan, HP. . .*Respondent*.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri R.R Rahi, Advocate.

For respondent : Shri Rajiv Sharma, Advocate.

AWARD

The following reference has been sent by the appropriate government for adjudication:

Whether termination of the services of Shri Nand Lal S/o Shri Gurbant, Village Gharer, Post Office Ekhoo, Tehsil Baddi, District Solan, HP during 20-12-11 by the Factory Manager/ Occupier, M/s Abott Health Care Pvt. Ltd., Village Bhatuali Khurd, Sai Road Baddi, District Solan, HP without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not what amount of back-wages, seniority, past service benefits and compensation the above Ex-worker is entitled to from the above employer?"

2. In nutshell the case of the petitioner is that initially he was engaged as trainee technician on 20.12.2010 by the respondent and he discharged his duties as assigned to him to the entire satisfaction of his superiors. The petitioner has worked continuously till 19.12.2011 on which date his services have been terminated without conducting any enquiry and without following the mandatory provisions of Industrial Disputes Act, 1947 as no notice under section 25-F/N has been issued to him despite the fact that the petitioner had completed more than 240 working days in each calendar year. The petitioner made several requests to the respondent for his re-engagement but of no avail and even the respondent has violated the principles of "last come first go" as number of juniors of the petitioner as well as fresh persons are still working with the respondent. It is further stated that the petitioner is un- employed after his illegal termination. Against this back-drop the petitioner has prayed that the termination letter dated 19.12.2011 be declared illegal and the respondent be directed to re-engage the petitioner on the same place and vicinity along-with seniority and full back-wages.

3. By filing reply, the respondent had contested the claim of the petitioner wherein preliminary objections had been taken qua maintainability, that the petitioner does not fall under the definition of workman and the petitioner is gainfully employed. On merits, it has been asserted that the petitioner joined with the respondent as a trainee w.e.f. 20.12.2010 and he was being paid stipend and his training period came to an end on 19.12.2011. It is denied that the petitioner was engaged on daily wages basis. The petitioner had accepted the terms and condition of appointment letter issued to him and since the petitioner was taking the training from the respondent, hence, he was not a worker and as such he does not fall under the purview of the Act. It is further asserted that since the petitioner was engaged as trainee, hence, there is no question to comply with the provisions of the Act. The respondent prayed for the dismissal of the claim petition.

4. Rejoinder not filed. Pleadings of the parties gave rise to the following issues which were struck on 10.3.2014.

1. Whether the termination of the services of the petitioner w.e.f. 20.12.2011 is illegal and unjustified as alleged? . .*OPP.*

2. If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? . .*OPR.*

3. Whether this petition is not maintainable as alleged? . .*OPR.*

4. Relief.

5. Besides having heard the learned counsel for the parties, I have also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1	No.
Issue no.2	Becomes redundant.
Issue no. 3	No.
Relief.	Reference answered in favour of the respondent and against the petitioner.

Reasons for findings.

Issues no.1 .

7. Learned Counsel for the petitioner contended that the services of the petitioner were illegally terminated by the respondent without complying with the provisions of the Act as no enquiry has been conducted before terminating his services despite the fact that the petitioner has completed more than 240 working days in each calendar year. He further contended that junior persons to the petitioner and fresh hands are still working with the respondent whereas his services have been terminated in violation of the provisions of section 25-G & 25-H of the Act.

8. On the other hand, Ld. Counsel for the respondent contended that the petitioner was engaged as trainee, and his training period came to an end on the completion of his training period, hence, there is no need to comply with the provisions of the Act.

9. To prove his case, the petitioner examined three PWs. Petitioner stepped into the witness box as PW-1 and tendered in evidence, his affidavit Ex. PW-1/A wherein he reiterated almost all the averments as stated in the claim petition. He also tendered in evidence the copy of letter dated 20.12.2010 Ex. PW-1/B, copy of letter dated 19.12.2011 Ex. PW-1/C and copy of ESI card Ex. PW-1/D. In cross-examination, he admitted that letter Ex. PW-1/B was given to him and he signed the copy of the same in token of its acceptance. He further admitted that show cause notice dated 8.8.2011 Ex. R-2 was issued to him and on 17.8.2011 a warning letter Ex. R-3 was issued to him. He also admitted that certificate Ex. R-4 dated 19.12.2011 was also issued to him and pay order Ex. R-5 was received by him. He admitted that on 19.12.2011 letter Ex. R-6 was issued to him and that at the time of retaining as trainee he was told that his training period was only for one year. He denied that other trainees were also given training and after successful training they were relieved.

10. PW-2 Shri Jeetan Chand has stated that the petitioner received training under him and the work & conduct of the petitioner remained good during the training period. There were many trainees who joined the training and some of them are still working and they have been confirmed in service. In cross-examination, he admitted that the job of operator is to operate machines and not to give training. He denied that the company has kept special instructors and trainers for imparting the training. He denied that quality assurance department also gives training to the trainees but admitted that supervisors give training to the trainees. He further admitted that the work and conduct of the trainees is being assessed by the respondent.

11. PW-3 Shri Des Raj has stated that he is working as technician with the respondent company since 11.6.2007. The petitioner had worked under him in the company and the work and conduct of the petitioner was very good during his service tenure. The persons engaged with the petitioner as trainee technicians are still working with the company. In cross-examination, he admitted that there are 350 technicians working in the company and others are associates. He denied that some of the trainees who undergo successful training are absorbed in the company and rests of them are not taken in service. He admitted that he had not given any training to any trainees.

12. On the contrary, the respondent examined two RWs. RW-1 Shri Ravindera Dhapola, General Manager tendered his affidavit Ex. RW-1/A in evidence wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence the copy of full & final settlement sheet Ex. RW-1/B. In cross-examination, he denied that after the completion of training, the trainees are given the job by the respondent. He has no knowledge as to how many other trainees have joined the company along-with the petitioner on 20.12.2010. He denied

that 12 other trainees have joined the company along-with the petitioner and out of them 8 trainees were retained by the company. He admitted that the petitioner had submitted the reply to show cause notice Ex. R-2 but denied that the show cause notice Ex. R-2 was only given to oust the petitioner as he was not wearing the helmet. He denied that the work and conduct of the petitioner was satisfactory during the training period.

13. RW-2 Shri Devendra Kumar Solanki has tendered his affidavit Ex. RW-2/A wherein he has stated that the petitioner does not fall under the definition of workman as he was engaged as trainee and the training period of the petitioner was for one year from the date of his engagement. The petitioner was not terminated, who was relieved on the completion of the training. In cross-examination, he admitted that some other trainees were also given training along-with the petitioner but denied that all of them have been retained by the respondent. He denied that the petitioner was working as a worker and not as a trainee and that the services of the petitioner were illegally terminated.

14. I have gone through the respective contentions of the learned counsel for the parties and also closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that the petitioner was engaged as trainee in the Formulation Plant of the respondent at Baddi for a period of one year from the date of his joining i.e w.e.f. 20.12.2010 on the basis of monthly stipend. As per terms and conditions of the letter Ex. PW-1/B, the traineeship did not entitle him to claim any employment with the respondent. In cross-examination, the petitioner admitted that the letter regarding offer of traineeship Ex. R-1, bears his signatures. As per clause 10 of the terms and conditions of letter Ex. R-1, on completion of the training period, the training will automatically come to an end. In cross-examination, the petitioner admitted that on 19.12.2011, regarding termination of his traineeship, letter Ex. R-6 was issued to him which bears his signatures and he also received pay order amounting to ₹ 6033/, Ex. R-5 which also bears his signatures. He further admitted that at the time of retaining him as trainee, he was informed by the respondent that his training period was only for one year and thereafter he had not received any confirmation letter. The learned counsel for the respondent contended that the petitioner was only a trainee, hence, he does not fall under the definition of workman as defined in section 2 (s) of the Act. Now, the question which arises for consideration before this Court is as to whether the petitioner falls under the definition of a workman or not. This question has been considered in detail by the Hon'ble High Court of Andhra Pradesh in its judgment 2004 LLR 387, Vijayalakshmi Insecticides and Pesticides Ltd., Hyderabad Vs. Chairman, Industrial Tribunal-cum-Labour Court, Visakhapatnam and Ors. wherein it has been held that:

> "In Ahmedabad Mfg. & Calico Ptg., Co. Ltd Vs. Ramtahei, AIR 1972 SC 1598, it was held that the workers in order to come within the definition of "employee" need not necessarily be directly connected with the main industry. In K. Dasarath Vs. Labour Court-1, Andhra Pradesh, Hyderabad (W.P. No: 14787/1996 decided on 27.3.2002) 2002 (4) ALT 194. 2002 LLR 945, one of us (P.S Narayana. J) while dealing with the aspect of probationer and termination of services and validity thereof, had arrived at the conclusion that though the probation of the petitioner/workman was extended twice, the same cannot be taken as deemed confirmation and hence the order of termination cannot be interfered with. In M/s Kalyani Sharp India Ltd. V. Labour Court no.1 Gwalior, AIR 2002, SC 300, the Apex Court while dealing with the termination of service without notice of a trainee technician had arrived at the conclusion that such termination before the expiry of probationary any period without issuance of any prior notice while not amount to retrenchment and hence the same is not legal in the said discussion, the Apex Court had referred to an followed the discussion in Escorts Ltd. Vs. Presiding Officer, (1997) 11 SCC 521 and M. Venugopal Vs. Divisional Manager LIC of India 1994 -1 CLR 544 SC

(1994) -2 SCC 323 in Kamal Kumar Vs. J.P S Malik, Presiding Officer Labour Court, 1998 (79) FLR 965 (Del), the Delhi High Court held:

> " It is no doubt true that section 2 (s) of the Act also uses the expression 'apprentice', but merely using the work 'apprentice' within the definition of "workman". In my considered opinion, cannot confer right on a trainee to be called a workman within the meaning of section 2(s) of the Act. When the said definition is liked into closely. It is apparent that an apprentice could be a workman under section 2(s) of the Industrial Disputes Act if he is employed to do any manual, clerical, supervisory or technical work." In management of M/s Otis Elevator company Ltd Vs. Presiding Officer, Industrial Tribunal-III 2003 (96) FLR 53, it was held that a trainee engaged by the petitioner-company does not fall within the definition of workman."

15. In 2001, LLR 812, Kalayani Sharp India Ltd. Vs. Labour Court no.1,Gawalior and another, the Hon'ble Supreme Court has held that:

> "The order of employment itself clearly sets out the terms thereafter which makes it clear that the facility of providing training to him could be put to an end at any time without assigning any reason whatsoever and his services could be regularized only on satisfactory completion of his training. If these clauses are read together, it is clear that he was under probation during the relevant time and if his services are not satisfactory, the same could be put an end to. It is clear that the respondent had been appointed as a trainee service technician and for a period he had to undergo the training to the satisfaction of the appellant and if his work was not satisfactory during that period, the facility could be withdrawn at any time and he would be regularized only on completion of his training. Thus, the respondent's services were terminated before expiry of the probationary period. In such a case question of issue of notice before terminating the services as claimed by the respondent does not arise. Escort case (ide supra), is identical with the present case. Following the said decision and for the reasons stated therein these appeals are allowed. The order made by the Labour Court is set aside and the claim made by the respondent is dismissed."

16. Further, in 1997 LLR 699 SC, Escorts Ltd., Vs. Presiding Officer and anr., it has been held by the Hon'ble Supreme Court that:

> "3. We do not consider it necessary to go into the question whether the workman had worked for 240 days in a year and whether Sundays and other holidays should be counted, as has been done by the Labour Court, because in our opinion, Shri Shetye is entitled to succeed on the other ground urged by him that the termination of services of the workman does not constitute retrenchment in view of clause (bb) excludes from the ambit of the expression 'retrenchment' as defined in the main part of section 2(oo) "termination" of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein. "The said provisions has been considered by Court in M. Venugopal Vs. Sivisional Manager, LIC and anr. 1994 (2) SCC 323. The appellant in that case had been appointed on probation for a period of one year from May, 23, 1984 to May 22, 1985 and the said period of probation was extended for further period of one year from May 23, 1985 to May 22, 1986. Before the expiry of said period of probation, his services were terminated on May 9, 1986. It was held that since the termination was in accordance with the terms of the contract though before the expiry of the period of probation it fell within the ambit of

section 2(oo)(bb) of the Act and did not constitute retrenchment. Here, also the services of the workman were terminated on February 13, 1987, as per the terms of the contract of employment contained in the appointment letter dated Jan., 9 1987 which enable the appellant to terminate the services of the workman at any stage without assigning any reason. Since, the services of the workman were terminated as per the terms of the contract of employment, it does not amount retrenchment under section 2(oo) of the Act and the Labour Court was in error in holding that it constituted retrenchment and was protected by section 25-F and 25-G of the Act."

17. Therefore, the perusal of the aforesaid judgments makes it clear that a trainee will not be a "workman" as defined under section 2(s) of the Act. In the present case also as per the letter regarding offer of traineeship Ex. PW-1/B, the petitioner was engaged as trainee for a period of one year from the date of his joining on the basis of monthly stipend and on the completion of the training period his training automatically came to an end on 19.12.2011. Therefore, in the light of the aforesaid facts it can safely be held that the petitioner was not a "workman" as the purpose of the engagement of the petitioner was only to offer him training under the terms and conditions stipulated in the letter Ex. PW-1/B. The petitioner was being paid only a stipend which cannot be termed as wages. In that view of matter, the petitioner will not come within the definition of "workman" as defined under section 2(s) of the Act. Therefore, in such a case, the question of issuance of notice under section 25-F of the Act does not arise at all. Similarly, it cannot be said that there is any violation of provisions of section 25-G and 25-H of the Act.

18. Therefore, in view of my above discussion and law laid down (supra), I have no hesitation in holding that the termination of the services of the petitioner w.e.f. 20.12.2011 is not illegal and unjustified as he was only imparted training by the respondent during his training period. Accordingly, this issue is decided in favour of the respondent and against the petitioner.

Issue No.2

19. Since, the petitioner has failed to prove issue no.1, this issue becomes redundant.

Issue no.3.

20. In support of this issue, no evidence has been led by the respondent. However, the petitioner has filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Relief.

As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioner fails and is hereby dismissed and as such the reference is ordered to be answered in favour of the respondent and against the petitioner. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 28th day of July, 2016.

(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P).

Ref. No. 200 of 2002.

Instituted on 24.7.2002.

Decided on 19.7.2016.

Narpat Ram S/o Shri Vazeeru R/o Village Sehlana, P.O Sehrol, Tehsil Arki, District Solan, HP. . .*Petitioner.*

Vs.

HP State Electricity Board through its Executive Engineer, Division Arki, Solan, HP. . .*Respondent.*

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri Virender Thakur, Advocate.

For respondent: Shri Vinil Thakur, Advocate vice Shri Ramakant Sharma, Advocate.

AWARD

The following reference has been sent by the appropriate government for adjudication:

''क्या अधिशाषी अभियंता हि0 प्र0 राज्य विद्युत परिषद मंडल अर्की जिला सोलन द्वारा श्री नरपत सपुत्र श्री वजीरु राम कामगार का वर्ष 1991 से बिना किसी नोटिस, जांच के तथा क्षतिपूर्ति मुआवजा दिये बिना नौकरी से निकाला जाना उचित है? यदि नहीं तो कामगार किस राहत एंव सेवा लाभों का हकदार है?''

2. In nutshell the case of the petitioner is that initially he was appointed as daily waged beldar w.e.f. 19.11.1979 to August 1981 in Sub Division Arki by the respondent department and thereafter he was engaged from 1982 to 1986 and then from 1987 to 1991 and completed more than 240 days in each calendar year and also in preceding 12 months. It is further stated that in the year, 1991, he fell ill and had submitted medical certificate in the office of respondent and after fitness, he requested the department to issue muster roll in his favour by re-engaging him but he was told that his services have been terminated and he had been orally assured that as and when the work will be available his services would be re-engaged. His services had been terminated without giving him any notice and without paying retrenchment compensation in violation of the provisions of section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as Act) and even his juniors are still working with the department whereas he was retrenched from service which is totally illegal and against the provisions of the Act. Against this back-drop a prayer has been made for his reinstatement in service along-with all consequential service benefits.

3. By filing reply, the respondent had contested the claim of the petitioner wherein preliminary objections had been taken qua petition being time barred and maintainability. On merits, it has been asserted that initially the petitioner was engaged as daily wager on muster roll w.e.f. 26.12.1981 to 25.10.1983 and thereafter he worked w.e.f. 21.9.1984 to 20.5.1989. It is

denied that the petitioner had worked for 240 days in preceding 12 months and that he had made so many representations to the respondent regarding his re-engagement. It is further denied that the services of the petitioner had been terminated by the respondent. It is asserted that the petitioner had left the job on his own and did not resume the duty, hence he was not required to serve with notice and no juniors to him have been retained by the department. The petitioner has raised the present dispute after a lapse of about 11 years. The respondent prayed for the dismissal of the petition.

4. Rejoinder not filed. Pleadings of the parties gave rise to the following issues which were struck on 29.7.2004.

1. Whether the termination of petitioner by the respondent without notice, chargesheet, and retrenchment compensation is proper and justified? . .*OPP.*

2. If issue no.1 is not proved, to what service benefits, the petitioner is entitled to? . .*OPP.*

3. Whether the claim is time barred and is not maintainable? . .*OPR.*

4. Whether there is no enforceable cause of action? . .*OPR.*

5. Whether the claim of not maintainable in the present form? . .*OPR.*

6. Whether the petitioner left the job of his own as alleged? . .*OPR.*

7. Whether junior persons have been retained? . .*OPR.*

8. Relief.

5. Besides having heard the learned counsel for the parties, I have also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1	Decided accordingly.
Issue no.2	Becomes redundant.
Issue no.3	No.
Issue no.4	No.
Issue no.5	No.
Issue no.6	Yes.
Issue no.7	No.
Relief.	Reference answered in favour of the respondent and against petitioner per operative part of award.

Reasons for findings.

Issues no.1, 6 & 7.

7. Being interlinked and correlated, all these issued are taken up and discussed together for decision.

8. Ld. Counsel for petitioner contended that the services of the petitioner have been terminated illegally without following the mandatory provisions of the Act. He further contended that before terminating the services of the petitioner, neither any notice was issued to him nor he was paid retrenchment compensation and since the petitioner had completed 240 days in each calendar year, his termination without issuance of any notice and without payment of compensation is against the provisions of the Act. He also contended that the persons junior to the petitioner have been retained in violation of the provisions of section 25-G of the Act.

9. On the other hand, learned counsel for the respondent contended that the services of the petitioner have never been terminated by the respondent, who himself left his job without intimation to the respondent. He further contended that the petitioner had not completed 240 days in any calendar year and no junior to him had been retained/engaged by the respondent.

10. To prove his case, the petitioner examined himself as PW-1 and deposed that he was working with the respondent w.e.f. 19.11.1979 and continued as such upto 1991 and thereafter his services were dis-engaged without any notice, chargesheet or compensation. He had completed 240 days in each calendar year and juniors to him namely Paras Ram, Jaya Ram, Tulsi Ram, Jamna Dass, Bhagat Ram, Ratti Ram, Paras Ram, Jia Lal, Prakash, Lekh Raj, Dila Ram, Roop Ram and Paras Ram were still working with the respondent. He prayed for his re-instatement along-with all consequential service benefits including seniority, back-wages and continuity in service. In cross-examination, he denied that he was engaged in 1981 and worked upto 20.5.1989. He further denied that he had abandoned the job at his own w.e.f. 20.5.1989 and that he had not completed 240 days in a calendar year.

11. On the other hand, the respondent examined RW-1 Shri Narotam Dutt Sharma, AAE, who deposed that as per mandays chart Ex. RW-1/A, the petitioner had worked w.e.f. 26.12.1981 to 20.5.1989 and during the aforesaid period, he had not worked continuously and regularly and after 20.5.1989, he had left the job at his own. The petitioner had not made any written request for his re-engagement with the respondent and as such the respondent department had not violated any provisions of I.D Act and standing order. They have not engaged any new/fresh hand. The petitioner is not entitled for his re-engagement, seniority and continuity in service. In cross-examination, he expressed his ignorance that numbers of juniors are working in Electrical Division Arki. He has no knowledge that S/Shri Ratti Ram, Bhagat Ram, Paras Ram, Jia Lal etc. who are still working in the department are juniors or seniors to the petitioner. He denied that the petitioner has completed 240 days in a calendar year preceding his termination. He further denied that the petitioner made number of representations to the department and that the petitioner had produced one medical certificate in 1991.

12. Before, I proceed further, it is important to mention here that earlier the present reference was answered against the petitioner by this Court vide award dated 25.7.2006 which was challenged by the petitioner before the Hon'ble High Court by filing CWP no. 5836 of 2010 which was decided by the Hon'ble High Court on 19.5.2016 and the case was remanded back to this Court with the directions to decide the same afresh. The relevant portion of the aforesaid order reads as under:

> "7. Therefore, in this view of the matter, impugned award dated 25.7.2006 in Ref. No. 200 of 2002 is accordingly set aside and the matter is remanded to the learned Labour

Court, Shimla with further direction that the same be adjudicated upon afresh and award be passed in accordance with law on or before 30th September, 2016."

13. After passing of aforesaid order, both the parties through their respective counsels have put in appearance before this Court on 30.5.2016.

14. I have heard the learned counsel for parties and also scrutinized the record of the case minutely.

15. After the closer scrutiny of the record of the case, it has become clear that the service of the petitioner had been engaged by the respondent on 26.12.1981 as is evident from the mandays chart Ex. RW-1/A. No doubt, the petitioner has claimed that he was engaged by the respondent as daily paid worker in the year, 1979 and continued till 1991 but he has failed to lead any documentary as well as oral evidence in support of his such assertion which could go to show that his services had been engaged in the year, 1979. As per mandays chart Ex. RW-1/A, it is abundantly clear that the petitioner had worked for 265 days in the year, 1982, 159 days in 1983, 14 days in 1984, 97 days in 1985, 79 days in 1986, 219 days in 1987, 136 days in 1988 and 83 days in 1989. Therefore, from the perusal of mandays chart Ex. RW-1/A, it is clear that the petitioner had worked with the respondent till 20.5.1989 and he had only completed 240 days in the year, 1982 and thereafter, he had failed to complete 240 days in any calendar year. There is nothing on record which could show that the petitioner has completed 240 working days in twelve calendar months preceding his termination. In *2009 (120) FLR 1007 incase titled as Relip Nagarpalika Vs. Babuji Gabhaji Thakore and others*, the Hon'ble Supreme Court has held as under:

> **"The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer."**

16. In *AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat V/s Dayabhai Amar Singh, the* Hon'ble Supreme Court has held that:—

> **"In case workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated."**

A bare perusal of the extract of the judgments produced, hereinabove, shows that the burden to prove completion of 240 days service lies on the workman and this burden is discharged on workman stepping in the witness box and adducing cogent evidence. However, in the instant case, the petitioner has failed to prove on record that he had put in 240 days in twelve calendar months preceding his termination.

17. From the perusal of mandays chart, Ex. RW-1/A, it is abundantly clear that the petitioner had not completed 240 working days in the calendar year preceding his termination. Hence, the case of the petitioner does not fall under section 25-F of the Industrial Disputes Act, 1947 and as such no protection of section 25-F can be granted to the petitioner.

18. The learned counsel for the petitioner next contended that at the time of the termination of the petitioner, the respondent had retained his juniors namely Paras Ram, Jaya Ram, Tulsi Ram, Jamna Dass, Bhagat Ram, Ratti Ram, Jia Lal, Prakash, Lekh Raj, Dila Ram and Roop Ram who are still working with the respondent as such the respondent had violated the provisions of section 25-G of the Act. However, except for the bald statement of the petitioner, no other evidence has been led by him to prove that the persons junior to him have been retained by the respondent. The petitioner has failed to summon/produce any record to prove that the aforesaid persons were junior to him and have been retained by the respondent. It was incumbent upon the petitioner to have summoned/produced the record pertaining to the date of appointment of the aforesaid persons and pertaining to the fact that these persons have been retained by the respondent. However, no such record has either been summoned or produced by the petitioner. Therefore in the absence of any cogent and satisfactory evidence on record, it cannot be said that the respondent had retained juniors to the petitioner as such the case of the petitioner does not fall under section 25-G and of the Act.

19. The learned counsel for the respondent contended that the services of the petitioner were never terminated but he himself had left the job at his own without any reason and did not resume the duties for the reasons best known to him. The case of the petitioner himself is that in the year 1991 he fell ill and submitted medical certificate to this effect and after becoming medically fit, he made so many representations but the respondent refused to re-engage his services. However, the petitioner has failed to produce any medical certificate and also failed to place on record any representation which he had allegedly submitted to the respondent for his re-engagement. Therefore, in the absence of any evidence on record, it can safely be held that the petitioner remained absent from work without any communication to the respondent and he had not made any representation to any authority about his reinstatement in service. In a similar situation our own Hon'ble High Court *In Nagar Parishad Bilaspur Vs. Bone Ram reported in 2005 (1) Shim. LC 79* has held that where the conduct of the workman is such that he had abandoned his job, his services would stand automatically terminated in law. The relevant extract of the aforesaid judgment reads as under:

> "10…… In this background, the only inference which can be drawn from the conduct of the workman is that he abandoned his job and his services stood automatically terminated in law. Such an automatic termination of services, caused by workman himself and not by the Employer, would not fall within the definition of "retrenchment".

20. In the present case also the conduct of the petitioner was such that he himself had abandoned the job and his services stood automatically terminated in law. Thus, in view of the law laid down (supra) and my foregoing discussion, I have no hesitation in holding that the termination of the services of the petitioner by the respondent is not illegal and unjustified. Accordingly, all the aforesaid issues are decided in favour of the respondent and against the petitioner.

Issue No.2

21. Since, the petitioner has failed to prove issue no.1 above, this issue becomes redundant.

Issue no.3.

22. As observed earlier, the present reference was answered against the petitioner by this Court vide award dated 25.7.2006 which was challenged by the petitioner before the Hon'ble

High Court by filing CWP no. 5836 of 2010 which was decided by the Hon'ble High Court on 19.5.2016 and the case was remanded back to this Court with the following observations:

> "After hearing learned counsel for the parties, I am of the considered view that the award passed by the learned Labour Court is not sustainable in law because the learned Labour Court has erred in dismissing the reference petition, inter alia, by holding the same to be time barred. Once a reference had been received for adjudication by the learned Labour Court, then the same ought to have been adjudicated on merit on the basis of material produced before it by the parties concerned. This adjudication by the learned Labour Court obviously has to depend upon the pleadings of the parties as well as the material which the respective parties are able to place on record before the learned Labour Court. However, the learned Labour Court cannot reject the adjudication of a reference received by it on merit on the ground that the same is time barred."

23. Therefore, in view of the order passed by the Hon'ble High Court, it cannot be said that the claim is time barred and is not maintainable. Hence, this issue is decided in favour of the petitioner and against the respondent.

Issue no.4 & 5.

24. In support of these issues, no evidence has been led by the respondent. The petitioner has filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, both these issues are decided in favour of the petitioner and against the respondent.

Relief.

As a sequel to my above discussion and findings on issues no.1 to 7, the claim of the petitioner fails and is hereby dismissed and as such the reference is ordered to be answered in favour of the respondent and against the petitioner. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 19th day of July, 2016.

(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT, SHIMLA, (H.P).

Ref. No. 89 of 2010.

Instituted on. 2.8.2010

Decided on 2.7.2016.

Himachal Pradesh Government Press Workers Union Shimla-171005 through its President Pratap Singh Thakur, S/o late Shri Hari Chand R/o Village Bagora, P.O Poaboo, District Shimla, HP. . .*Petitioner.*

Vs.

The Controller Printing &Stationary Department, Himachal Pradesh Shimla-5. . .*Respondent*.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri Rahul Mahajan, Advocate.

For respondent: Shri H.N Kashyap, ADA.

AWARD

The following reference has been sent by the appropriate government for adjudication:

1. **"Whether the removal from service by verbal orders of 15 workers by the Controller Printing & Stationary Department, HP Shimla without complying with provisions of the Industrial Disputes Act, 1947 is legal and justified? IF not, what relief, service benefits and compensation the 15 workers (as per list enclosed at Annexure A) are entitled to from the concerned employer?"**

2. "Whether the above 15 workers are workers of Controller Printing & Stationary Department, HP Shimla and whether the contractor ship is mere camouflage/disguise of the Controller Printing & Stationary Department, HP Shimla in order to protect itself from the illegal act done by way of termination of services of 15 workers?"

2. Briefly, the case of the petitioner union is that the department of Printing & Stationary Department, HP Shimla is an industry under section 2-J of the Industrial Disputes Act, 1947 (hereinafter referred to as Act) and is registered under the Factories Ac, 1948 and the respondent department performs all the job work of Printing & Stationary, files and executive diaries, calendars of various departments/semi government undertakings and also publish the gazette notifications, debates of Vidhansabha and reports thereof etc. The respondent department for the purpose of getting the work of printing done have engaged employees, workers, labourers directly on its rolls and employed more than 230 workers and 70 employees. It is further stated that the department of Labour & Employment permits employing the labourers through contractor in the trade of loading and unloading, housekeeping, cleaning, gardening and prohibits employment of contract laburers in core activity/ main/ principle nature of work and on machine under the Contract Labour (Regulation & Abolition) Act, 1948. The following workers have been appointed by the respondent department:

Name	**Father's name**	**Branch**	**Designation**	**Date of engage-ment**	**Date of termination**	**Address**
Gopal Singh	Pritam Chand	Tech. Block	Sweeper	May, 2000	1.7.2009	Village Jashi, P.O. Bharara, Tehsil Sunni District Shimla, HP.
Naresh Kumar	Ami Chand	Printing	Press Mazdoor	23.9.2K	1.7.2009	Village Hiwan, P.O Rouri, Tehsi & Distt. Shimla.

Gaurav Rattan	Vijay Ratta	Binding	Press Mazdoor	28.4.2K	1.7.2009	Set no.1, T-2, Block B Press Colony Ghora Chowki Shimla.
Ram Pal	Tej Ram	offset	Press Mazdoor	26.3.2K	1.7.2009	Vill. & P.O Tibban Tehsil, Karsog Distt. Mandi, HP.
Sheesh Ram	H.D Kashyap	offset	Press Mazdoor	2/2000	1.7.2009	Village Anji, P.O. Taradevi, District Shimla.
Budhi Singh	Dharam Chand	Printing	Press Mazdoor	2/2000	1.7.2009	Village Manoh, P.O. Karotha, Tehsil Bhoranj, Hamirpur.
Tulsi Ram	Daulat Ram	composing	Press Mazdoor	29.4.1994	1.7.2009	Village Bhamki Bainsk, P.O Sehrol, Tehsil Arki, Solan.
Mehar Singh	Garga Ram	Binding Mazdoor	Press	5/2000	1.7.2009	Vilage Kungwan, P.O. Bhatra, Tehsil S/ghat, District Mandi.
Omi	Dev Dutt	composing	Press Mazdoor	6/2000	1.7.2009	Vill. & P.O Gumma, Tehsil Sunni, Shimla
Vijay Kumar	Meena Ram	printing	Press Mazdoor	5/2000	1.7.2009	Vil. Bhoat, Tehsil Sangrah, District Sirmour, HP.
Kamal Raj	Bhagat Ram	MONO	Press Mazdoor	12/2000	1.7.2009	Vill. Rondi, P.O Nohradhar, District Sirmour, HP.
Surender	Salig Ram	composing	Press Mazdoor	9/2004	1.7.2009	Vill. Bhoai, The. Sangrah, District Sirmour, HP.
Sanjay Kumar	Krishan Lal	Binding	Press Mazdoor	9/2004	1.7.2009	Vill. Majhayla, P.O. Panesh, Shimla.
Babu Lal	Dharam Dass	Tech. Block	sweeper	4/2000	1.7.2009	Tutikandi Shimla, HP
Kailash Kumar	Gopal Singh	Tech. Block	sweeper	3/2004	1.7.2009	Vill. Barar House, Majhat Totu, Shimla.

It is further stated that the above workers had worked with the utmost honesty, sincerity, devotion and to the best of their ability and there were no complaints from any department in which they had been working and even at no point of time neither any show cause notice nor any chargesheet was issued to them. All the workers have completed more than 240 days of

continuous service in terms of section 25-F of the Act. It is also stated that from the very beginning the workers, as aforesaid, were the workers of respondent department as the attendance, payment of wages, sanctioning of leave, issuance of orders to perform the job, immediate control and supervision, directions, day to day supervision etc., were being given to the aforesaid workers by the supervisor of the Branch in which they were working. The workers were working on the machines in printing, binding, offset, mono composing and technical work and were also doing the main functions/activities/duties which were being carried by the respondent department and even the aforesaid workers used to mark their attendance in the attendance sheet which was being maintained by the respondent department and was being countersigned by the supervisor of the concerned branch. No appointment letters had been given to the workers and they were kept on daily wages basis and even the workers union had approached the Department for regularization but surprisingly it was told by the department that the said workers have been engaged through contractor when no contractor was ever kept by the department to perform any duties connected with the main work of the department and the services of the 15 workers have been retrenched on 1.7.2009 in violation provisions of section 25-N of the Act and also without taking permission as required under the Act. Thereafter, the demand notice was raised by the workers union and the conciliation proceedings failed and the reference was sent to this Court for adjudication. It is further stated that the aforesaid workers have been appointed directly by the respondent department and the contractor is just a name sake, who has been introduced by the department just to avoid regularization of the workers and after the retrenchment of the above workers from 1.7.2009, they are unemployed and even the department is employing labourers through contractor for loading and unloading work only and at present 8-12 workers have been employed through contractor and no contract workers have been appointed to do the job on machines and also carrying the printing material from printing press to the store room and raw material from the store room to machines. Since, the respondent department had adopted hire and fire policy in total disregard to the provisions of the Act, natural justice, fair hearing and violation of labour legislation, hence their termination w.e.f. 1.7.2009 is illegal and unjustified. Against this back-drop, a prayer has been made that the reference be answered in favour of the petitioners and against the respondent and the claim of the petitioners be allowed in totality.

3. By filing reply, the respondent had contested the claim of the workers union wherein preliminary objections had been taken qua maintainability and that the petitioners have no locus standi to maintain and file the present petition. On merits, it has been asserted that the respondent department is an industry under section 2-J of the Act. It is admitted that the respondent department performs the job work of printing and stationery, files and executive dairies, calendars of various departments and semi government departments and also publishes the gazette notifications and debates of Vidhansabha etc. It is asserted that for the smooth functioning of the department, besides regular staff the daily wagers are deployed as provided by the government from time to time and the department had not engaged any worker on daily wages basis on its own. It is denied that the respondent had engaged workers/labourers directly on its roll. It is asserted that the required labourers/workmen are engaged to assist the technical staff and to undertake the other manual work connected with the function of the department are hired from the contractor after duly entering into an agreement/contract with him and the wages of the workers are handed over to the contractor either in cash or through bank draft in terms of the agreement who is further liable to pay the same to his workers, however, the work from the workers is monitored by supervisor/branch incharge concerned which is entrusted to them and accordingly verified and as such the contractor is liable to carry out the work as per agreement by engaging his own labourers i.e loading and unloading etc. No worker has been deployed on machine and in the core activities of department for the reasons that respondent has its own technical staff and as such the labourers/workers are not deployed in derogation of law. It is denied that the respondent ever appointed the workers whose names have been annexed as

annexure A of the petition. The workers worked with the respondent as per the requirement of the work as provided by the contractor and the payment of such work has been made to the contractor concerned on the basis of agreement and approved rates by the Deputy Commissioner as well as against contractor bills. The bills relating to the year, 1994 to Feb., 2004 have been weeded out keeping in view the instructions given in the office manual and the sanction note/bill/expenditure sanction/ receipts of the payments received by the contractor from 31.3.2004 to 30.6.2009, except the bills for the months of March, 2008 and October, 2008, have been attached as per enclosed annexures from annexure R-1 to annexure R-63. It is further asserted that the respondent has regular staff like press mazdoors, sweepers and they fall in class-IV category duly appointed under recruitment & promotion rules and designated as press mazdoors and sweepers. Since the workers (petitioners) were provided by the carriage contractor from time to time and as per the agreement, there was no question of issuing any show cause notice, chargesheet and penalty to them regarding any complaint and as such there exists no relationship of employee and employer between workers and department, hence, they cannot claim the protection of the Act. It is denied that the payments of wages were being released to them directly and leaves were sanctioned by the incharge concerned. However, it is submitted that for the purpose of running and handling the machinery used for printing stationery, the respondent has deployed trained technical staff helper, inker, binding machine attendant, mono machine attendant and press mazdoors etc. and the work taken from the above workers was manual such as lifting the papers and other material etc. from store to different branches and the store etc. and the workers used to do the work during the working hours from 9:00 AM to 5:00 PM including lunch break with the regular technical staff as per the time prescribed by the government. It is denied that the attendance sheet of the aforesaid workers used to be maintained by the respondent and countersigned by the supervisor of the concerned branch. It is submitted that the workers union represented the Hon'ble Chief Minister of HP through local leaders/MLA, however, it has been observed by the Hon'ble Chief Minister that "any work executed through the contractor may not enable the worker for regularization" and even the aforesaid workers were told rightly by the department that they have been engaged through contractor as per agreement/contract being entered with him by the department from time to time. The department is engaging labour for loading and unloading of the material required and other workers through contractors for the last many years by entering into a contract from time to time and S/Shri Gulam Mohideen and Shafiq Ahmad are also carriage contractors and the department had agreements/contracts with them for the aforesaid purpose and the copies of the agreements/contracts are annexure R-66 to R-75. It is denied that the contractor is just name sake and has been introduced by respondent just to avoid regularization of said 15 workers. It is also denied that the respondent is employing labourers for loading and unloading work only. Since, the workers were not the employees of the respondent department, hence, the violation of provisions of section 25-N of the Act does not arise and as such the respondent prayed for the dismissal of the claim petition.

4. By filing rejoinder, the petitioner reaffirmed his allegations by denying those of the respondent department.

5. Pleadings of the parties gave rise to the following issues which were struck on 28.9.2011.

5. Whether the removal from service of fifteen workers by the respondent is in violation of the provisions of the Industrial Disputes Act, 1947? . .*OPP.*

6. If issue no.1 is proved in affirmative to what relief of service benefits the petitioners are entitled to? . .*OPR.*

7. Whether the petitioners are not workman? . .*OPR.*

8. Relief.

6. Besides having heard the learned counsel for the petitioners and learned ADA for respondent, I have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1	Yes.
Issue no.2	Entitled for reinstatement with seniority and continuity in service but without back-wages.
Issue no.3	No.
Relief.	Reference answered in favour of the petitioner and against the respondent per operative part of award.

Reasons for findings.

Issues no.1 & 3.

8. Being interlinked and correlated, both these issues are taken up together for discussion and decision.

9. Learned Counsel for the petitioner contended that the workers of the petitioner union were the workers of respondent department as they have been appointed directly by the department and the contractor is just a name sake, who has been introduced by the department just to avoid regularization of the workers. He further contended that the attendance, payment of wages, sanctioning of leave, issuance of orders to perform the job, immediate control and supervision, directions, day to day supervision etc., were being given to the aforesaid workers by the supervisor of the Branch in which they were working and they (workers) were working on the machines, binding, offset, mono composing and technical work and also doing the main functions/activities/duties which were being carried by the respondent department and even the aforesaid workers used to mark their attendance in the attendance sheets which were being maintained by the respondent department and were being countersigned by the supervisor of the concerned branch. He also contended that all the workers have completed more than 240 days in each calendar year, hence, their services cannot be terminated without complying with the provisions of sections 25-N of the Act. Learned counsel further contended that after the termination of the services of the petitioner the respondent department had retained the persons junior to the workers of petitioner union and even engaged fresh hands in violation of the provisions of sections 25-G and H of the Act.

10. On the other hand, Ld. ADA for the respondent contended that for the smooth functioning of the department, besides regular staff the other workers are deployed as provided by the government from time to time and the department had not engaged any worker on daily wages basis on its own. He further contended that the required labourers/workmen are engaged to assist the technical staff and to undertake the other manual work connected with the functioning of the department who are hired from the contractor after duly entering into an agreement/contract with him and the wages of the workers are handed over to the contractor either in cash or through bank draft in terms of the agreement who is further liable to pay the same to his workers. He also contended that since the workers of petitioner union had not been engaged by the department, who

had worked with the department through contractor, hence, there is no need to comply with the provisions of the Act.

11. To prove their case, the petitioner union has examined five PWs. Shri Pratap Singh Thakur has stepped into the witness box as PW-1 and tendered his affidavit in examination-in-chief wherein he has supported all the contents as made in the claim petition including that being the president of the petitioner union he has been authorized to espouse the cause of 15 workers in respect of whom reference has been made to this Court. He also tendered in evidence documents Ex. PA to Ex. PS, certificate of registration of petitioner union Ex. PT and resolution Ex. PU. In cross-examination, he denied that the workers were not directly engaged by the respondent on its roll and respondent had not engaged 203 workers. He denied that no worker has completed 240 days in a particular calendar year as stated by him in his affidavit. He further denied that the workers never used to work on machine. He also denied that the workers never worked overtime. He denied that the claimants/workers were supplied by the contractor and that the daily wages of the workers as fixed by the D.C used to be paid to the workers through contractor. He denied that the respondent had not terminated the workers on 1.7.2009.

12. PW-2 Shri Sanjay Kumar also tendered his affidavit about examination-in-chief wherein he has reiterated almost all the averments as stated in the claim petition including that he was working as press mazdoor in binding branch with the respondent and he had been engaged by the respondent department. His services have been terminated by the respondent department on 1.7.2009 along-with 14 other workers and since the date of his termination he is unemployed as job of press mazdoor is specialized in nature and there are few presses in and around Shimla. After his termination, he along-with 14 other workers raised a dispute through union but the conciliation proceedings failed and the reference was made to this Court. In cross-examination, he denied that he was not engaged by the department and that his services along-with 14 other workers have not been terminated by the department. He further denied that he had not completed 240 days and that the wages to him along-with 14 other workers were being paid by the contractor. He also denied that the workers were being supplied by the contractor to the respondent. He admitted that wherever they used to work, their work was supervised by concerned branch supervisor and respondent used to monitor their work as per requirement. He denied that they were not engaged on machine and that he along-with other 14 workers have been engaged through contractor to assist the technical staff and to undertake other manual work. He denied that the muster rolls were not issued by the respondent and they themselves prepared the same. He denied that the cashier never used to pay them the wages and he never refused them not to append their signatures. He denied that they were called through contractor to undertake the additional work and that he along-with other workers were not designated as press mazdoors and sweepers etc. He denied that they used to carry out only manual work such as lifting of papers etc. He admitted that they used to work from 9:00 AM to 5:00 PM. He denied that since the contractor was asked to reduce the workers, hence the contractor removed them w.e.f. 1.7.2009.

13. PW-3 Shri Parmanand Thakur stated that he was engaged as daftri by respondent and continued as such till 2009 and he retired as section welder binding. S/Shri Sanjay Kumar, Mehar, Gaurav etc. were working under him in binding branch on machines and after the work on machine was completed, they used to shift the material to stores. Their attendance was being marked with him. The payment was being made to them by the office and their leaves were also sanctioned by them and in place of over time they were given the compensatory leaves. In cross-examination, he denied that the aforesaid persons have never worked on machines. He admitted that to operate the machines, the department had its own staff. He expressed his ignorance that aforesaid persons have been provided by the contractor. He denied that the presence of these workers, were not marked before him and that he had no right to sanction their leaves. He denied that these workers were not the employees of the department.

14. PW-4 Shri Joginder Pal has stated that he had been engaged as BMA in 1988 and S/Shri Gaurav, Sanjay and Mehar Singh were working in binding section on machines. The payment to these workers was being made by the department and their attendance was also marked by the department. They were terminated in the year, 2009. In cross-examination, he denied that these workers were not working on the machines and that his branch incharge did not sanction their leaves. He denied that the workers have been provided by the contractor in order to help the technical staff. He denied that the contractor had terminated these workers in 2009.

15. Shri Pyare Lal from the labour office, Shimla appeared into the witness box as PW-5 to depose that no licence under Contract Labour Act has been issued to Shri Gulam Mohideen and Safig Ahmad for deploying labour with respondent w.e.f. November, 1994 till 3.12.2009 and no licence under Contract Labour Act and Rules had been taken by the respondent for engaging contract labour. Ex. RA is the copy of demand notice raised by the petitioner union before the Labour Officer Shimla in which Gulam Mohideen and Shafiq Almad have submitted that 15 workers in respect of which demand notice had been received, were not engaged or terminated by them. In cross-examination, he stated that the contractor Gulam Mohideen and Shafiq Ahmad participated in proceedings on 28.4.2010. He denied that the workers of the petitioner union were the employees of Gulam Mohideen and Shafiq Ahmad. He further denied that during conciliation proceedings the petitioners failed to establish that they were the workers of the Printing Press. Ex. RA was filed by Gulam Kohideen and Shafiq Ahmad before the Conciliation Officer.

16. On the contrary, the respondent examined three RWs. RW-1 Shri Vijay Kumar Chaudhory, Deputy Controller has tendered his affidavit in evidence wherein he reiterated almost all the averments as made in the reply. In cross-examination, he admitted that the industrial unit of printing at Ghora Chowki, Shimla which is under the control of respondent department prints stationery, files, executive diaries for government officials, calendars for government department/semi government undertaking, public government notifications, debates of HP Vidhansabha and even supplies stationery to government and semi government departments. He admitted that being the Deputy Controller all the files are routed through him and the machines are installed for composing, proof reading, printing & binding. He further admitted that administrative staff does not do the work of composing, proof reading, printing and binding but the workers do the aforesaid things and the department used to engage approximately 230 to 250 workers for doing the aforesaid things. He also admitted that the department had neither approached the registering officer under the contract labour (Regulation and Abolition) Act, 1970 nor has the certificate under the aforesaid Act. He admitted that neither they have maintained a register of the contractors nor they have filed the returns wherein the name of the contractor and the number of the workers employed are written under the aforesaid Act and HP (Regulation & Abolition) Rules, 1974. He further admitted that they have referred to Shri Gulam Mohindeen and Shri Shafiq Ahmad (carriage contractor) in their reply and in his affidavit. He denied that they engaged the workers in respect of whom the reference has been made as daily wagers but volunteered that they had been engaged through contractors. He further denied that the workers were engaged to do the work on machines. He admitted that the workers used to lift the raw material from the store to the printing section and back to the store. He admitted that it is the duty of principal employer to see the licence of the contractors before awarding them work on contract. He denied that the contract carriage agreement does not provide for engaging of labour in other trades except for loading and unloading. He further denied that the workers used to be deployed for election duty. He admitted that the supervisor of the respondent department used to mark the attendance of the workers. He also admitted that the supervisor of the respondent used to depute the workers for their daily work, who also used to give them instructions. He had no knowledge that all the 15 workers had completed 240 days in each calendar year w.e.f. their date of joining. He admitted that after the disengagement of the workers, the department had

deployed 6-8 workers from HIMUDA. He denied that the workers who are deployed for laoding/unloading are not allowed to enter in the department but admitted that Employees Provident Fund is applicable in their department to every employee and that they had not made any contribution towards employees' provident fund. He further admitted that no notice under section 25-N was given to the workers before their termination. He also admitted that there is no record to show that which workers were deployed by the aforesaid contractors. He denied that all the 15 workers were engaged by the department and terminated by the department but admitted that the work of sweeping and press mazdoor is still available.

17. RW-2 Shri Vivek Sood has tendered his affidavit Ex. RW-2/A in evidence wherein he stated that all the payments against the bills had been made in the name of carriage contractor and no payment had ever been made to any workers/labourers concerned as the work was assigned to the carriage contractor and not to the workers/labourers independently. He also tendered in evidence the copies of bills Ex. RW-2/A to Ex. RW-2/ A-65 and copies of agreements Ex. RW-2/A-66 to Ex. RW-2/A-74. In cross-examination, he admitted that the name of the workers, whose names have been reflected in the annexure-A of the reference had not been mentioned in the bills Ex. RW-2/A-1 to Ex. RW-2/A-65. He further admitted that the licence of the contractors under the Contract Labour (Regulation & Abolition) Act and Rules, have not been either filed in the Court nor he had brought the same along-with the record. He also admitted that the department has no registration to deploy the contract labour as required under the Contract Labour Act and Rules and that the department had not filed any return under the aforesaid Act. He admitted that the agreements Ex. RW-2/A-66 to RW-2/A-74 are of carriage contract only and that out of 15 workers there were sweepers as well as press mazdoors.

18. RW-3 Shri Sohan Lal also tendered in evidence his affidavit Ex. RW-3/A wherein he has stated that he is holding the charge of general foreman of the respondent department and also used to supervise and look-after the work of workers/laburers deployed through carriage contractor and used to verify the muster rolls at the end of the month with consultation of carriage contractor and prior to his promotion, the work was being supervised by his predecessors namely Rattan Lal, Liaq Ram and Bharat Singh, who had verified the muster rolls of the carriage contractor for the said period. He further stated that no worker/laborer had even been appointed/engaged by the department at its own. In cross-examination, he admitted that the name of the workers, whose names have been reflected in the annexure-A of the reference had not been mentioned in the bills Ex. RW-2/A-1 to Ex. RW-2/A-65 and he used to supervise the work of 15 workers in question. He further admitted that branch supervisor had the control over the aforesaid workers and there were 230 to 250 workers employed in their department during the period when the workers in question were terminated. He denied that the workers, in question were working on machines but admitted that they used to carry the material from different branches to the store. He denied that the payment of wages, attendance, leave and other benefits were given by the respondent department. He denied that the 15 workers on making representation to the Chief Minister for regularization were retrenched but admitted that all the 15 workers were doing the work of press. He had no knowledge that all the 15 workers were the employees of the respondent.

19. The petitioner had claimed that the concerned 15 workers of the petitioner union were the employees of respondent whereas the respondent had stated that they were the employees of contractor. At this stage, it would be appropriate to reproduce sections 7 & 12 of the Contract Labour (Regulation and Abolition) Act (hereinafter referred to as Contract Labour Act).

> *7.* Registration of certain establishments:- (1) Every principal employer of an establishment to which this Act applies shall, within such period as the appropriate Government may, by notification in the Official Gazette, fix in this behalf with respect to establishments

generally or with respect to any class of them, make an application to the registering officer in the prescribed manner for registration of the establishment……

12. Licensing of contractors.- (1) With effect from such date as the appropriate Government may, by notification in the Official Gazette, appoint, no contractor to whom this Act applies, shall undertake or execute any work through contract labour except under and in accordance with a licence issued in that behalf by the licensing officer……

As per the provisions of section 7 & 12 of the aforesaid Act, the principal employer i.e respondent should have a certificate of registration from the prescribed authority and secondly the contractor should have a licence issued by competent authority i.e the Labour Department to deploy the contract labour. On perusal of the evidence on record, it is clear that neither the principal employer had the certificate of registration from the prescribed authority nor the contractor had a licence issued by the competent authority. RW-1, the Deputy Controller of the respondent department has admitted that the department has no certificate of registration under the Contract Labour Act. PW-5, an official from the Labour Department had categorically stated that no licence under the Contract Labour Act had been granted to the contractors S/Shri Gulam Moheedin and Shafiq Ahmad for deploying the contract labour.

20 Now, the question which arises for consideration before this Court is as to whether the contract was sham, ingeniune and camouflage as contended by the learned counsel for the petitioner. As per the statement of claim, the workers of the petitioner union were engaged by the respondent department and they were under its direct control and supervision.

21. It is by now well settled that if the industrial adjudicator finds the contract between the principal employer and the contract to be a sham, nominal and a camouflage to deny employment benefits to the employee, it can grant relief to the employee by holding that the workman is the direct employee of the principal employer. In (2009) 13 SCC titled as International Airport Authority of India Vs. International Air Cargo Workers Union and Anr., it has been held by the Hon'ble Apex Court as under:

"36. But where there is no abolition of contract labour under section 10 of CLRA Act, but the contract labour contend that the contract between principal employer and contractor is sham and nominal, the remedy is purely under the ID Act. The principles in Gujarat Electricity Board continue to govern the issue. The remedy of the workmen is to approach the industrial adjudicator for an adjudication of their dispute that they are the direct employees of the principle employer and the agreement is sham, nominal and merely a camouflage, even when there is no order under section 10(1) of CLRA Act.

37. The industrial adjudicator can grant the relief sought if it finds that contract between principal employer and the contractor is sham, nominal and merely a camouflage to deny employment benefits to the employer and that there is in fact a direct employment, by applying tests like: who pays the salary; who has the power to remove/dismiss from service or initiate disciplinary action; who can tell the employee the way in which the work should be done, in short who has direction and control over the employee".

22. For the determination of the question as to whether the contract is a sham, ingenuine and camouflage and whether the concerned workers are the employees of the contractors or the principal employer, the Court is required to consider several factors. In AIR 2004, SC 1639, in case of Workmen of Nilgiri Co-operative Marketing Society Ltd. Vs. Sate of Tamil Nadu, the Hon'ble Apex Court has observed as under:

"37. The control test and the organization test, therefore, are not the only factors which can be said to decisive. With a view of elicit the answer, the court is required to consider several factors which would have a bearing on the result : (a) who is appointing authority; (b) who is the pay master; (c) who can dismiss; (d) how long alternative service lasts; e) the extent of control and supervision; (f) the nature of the job, e.g. whether, it is professional or skilled work; (g) nature of establishment; (h) the right to reject.

38. With a view to find out reasonable solution in a problematic case of this nature, what is needed is an integrated approach meaning thereby integration of the relevant tests where for it may be necessary to examine as to whether the workman concerned was fully integrated into the employer's concern meaning thereby independent of the concern although attached therewith to some extent.

……..

96. The decisions referred to hereinbefore are indicative of the fact that the different tests have been applied in different cases having regard to the nature of the problem arising in the fact situation obtaining therein. Emphasis on application of control test and organization test have been laid keeping in view the question as to whether the matter involves a contract of service vis-vis contract for service; or whether the employer had set up a contractor for the purpose of employment of workmen by way of a smoke screen with a view to avoid its statutory liability".

In view of the ratio of the aforesaid judgments and in view of the evidence on record, it can safely be held that the concerned workers are the employees of the respondent department and there exists a relationship of employee and employer between them. It is clear from the evidence on record that the concerned workmen were working under the supervision and control of the respondent. The alleged contractors did not give any directions about the work to be carried out by the workmen. Neither the contractor nor any representative remained present to give any instructions to these workmen actually working in the premises of the respondent. There is no evidence on record to show and prove that the contractors or supervisors of the contractors were visiting the respondent department to supervise the work of these workmen. Moreover, the contractors S/Shri Gulam Moheedin and Shafiq Ahmad have filed a reply Ex. RA to the demand notice before the Labour Officer, Shimla Zone wherein it has been categorically stated by them that the 15 workers were neither engaged nor appointed by them and therefore they had no record of wages and mandays chart and the aforesaid workers were not their employees. PW-5, an official from the Labour Department has stated that the aforesaid reply Ex. RA was filed by the contractors before the Labour Officer, Shimla. It has been categorically stated by PW-1 in his affidavit tendered by way of evidence that the attendance, payment of wages, sanctioning of leave, issuance of order to perform job, day to day supervision of the workers was being done by the supervisors of the branch in which the workers were working on the machines. They used to mark their attendance in the attendance register which was maintained by the controller of the respondent department and the attendance sheets were countersigned by the supervisor of concerned branch. PW-1 has been cross-examined at length by the respondent however nothing favorable could be elicited from his cross-examination. PW-2, corroborated the statement PW-1 and in cross-examination he admitted that the work was supervised by the concerned branch of the respondent. He also admitted that the respondent used to monitor their work as per the requirement. He further stated that he was being paid the wages by the cashier of respondent department. PW-3, who was the employee of the respondent department had stated that S/Shri Sanjay Kumar, Mehar and Gaurav were working in binding branch and they used to work on machines and thereafter when the machine work was finished, they used to shift the material to store. He further stated that their attendance used to be marked by the respondent and the payments

also used to be made by the respondent and they used to be given compensatory leaves for over-time. PW-4 who was also the employee of the respondent department corroborated the statement of PW-3. Both the aforesaid witness were cross-examined at length, however, nothing could be extracted from their lengthy cross-examination. Moreover, RW-1 Shri Vijay Kumar Choudhary, the Deputy Controller of the respondent department in cross-examination admitted that the supervisors of the Printing & Stationery Department used to mark the attendance of the concerned workers. He further admitted that the alleged contractors have not deputed any supervisor and the supervisor of the department used to depute the workers for their daily work and he used to give them instructions. He also admitted that there was no record to show that which workers were deployed by the alleged contractors. He also admitted that neither the department had maintained the register of contractors nor they had filed the returns. RW-2, Senior Assistant from the respondent department who had produced the original records of the receipts Ex. RW-2/A-1 to Ex. RW-2/A-65, has admitted in cross- examination that the name of the workers have not been mentioned in the aforesaid bills. RW-3, Sohan Lal, Foreman of the respondent department also admitted that the names of the concerned workers have not been mentioned in the bills Ex. RW-2/A-1 to Ex. RW-2/A-65. He further admitted that he used to supervise 15 workers in question and the branch officer had the control over the workers. He also admitted that as per the photographs Ex. Ex. PS and Ex. PR, some of the concerned workers have been shown working on the machines. RW-3, Foreman of the department admitted that all the 15 workers were doing the work of press and he was taking the work from them.

23. Therefore, from the aforesaid evidence, it is clear that the workers were doing the core activities of the press in the premises of the respondent department and the supervisor of the respondent used to supervise their work. Though, the respondent had produced the bills/receipts of payments received by the contractors from 31.3.2004 to 30.6.2009, Ex. RW-2/A-1 to Ex. RW-2/A-65. However, there is no reference of the concerned 15 workers in the aforesaid bills. Moreover, the aforesaid bills have not been proved in accordance with law as the receipts have been purportedly issued by the contractors Gulam Moheedin, Shafiq Ahmad and Sushil Kumar but the respondent had failed to produce them in the witness box to prove the due execution of the aforesaid receipts. Therefore, from the aforesaid bills/ receipts, it cannot be inferred that the salary/wages to the concerned workers were being paid by the contractors. There is no other evidence on record to suggest that the salary/wages to the concerned workers were being paid by the contractor and not by the respondent department. Moreover, the agreements, Ex. RW-2/A-66 to Ex. RW-2/A-74 have also not proved in accordance with law which have allegedly been executed between the department and the alleged contractors as none of the signatory to the aforesaid agreements had appeared in the witness box to prove the due execution of the aforesaid agreements. Therefore, in the absence of any satisfactory evidence on record, it cannot be said that the contract between the principal employer and the contractor is genuine.

24. As observed earlier, the evidence, on record further shows that when these workers started working with the respondent, the respondent department had no certificate of registration and the alleged contractors did not have the necessary licence under the Contract Labour (Regulation and Abolition) Act to deploy the contract labour. In Secretary, Haryana State Electricity Board Vs. Suresh and other - AIR 1999 SUPREME COURT 1160, it is observed that once the so called contractor was not a licensed contractor under the Act, the inevitable conclusion that had to be reached was to the effect that so called contract system was a mere camouflage, smoke screen and disguised in almost a transparent veil which could easily be pierced and the real contractual relationship between the principal employer, on the one hand, and the employees, on the other, could be clearly visualized. In the present case, this is one added factor which shows that the contract is sham and bogus as the evidence on record shows that neither the respondent department had a certificate of registration nor the contractor had a licence at the relevant time.

25. It has also come in the evidence on record that the department had installed machines for composing, proof reading, printing and binding etc. and for doing the aforesaid work, the department used to engage approximately 230-250 workers as admitted by RW-1 in cross-examination. He also admitted that after the dis-engagement of the concerned workers, the department had deployed the workers from HIMUDA and the work is continuously available. Thus, it is clear that the respondent is in need of additional manpower in a regular manner on its roll. The evidence on record further shows that the workers of the petitioner union had been continuously working for a long time in the establishment of respondent, therefore, it can safely be said that they are fully integrated in the establishment of the respondent.

26. Therefore, taking into consideration the above facts and various attending circumstances, it is clear that the contractors had no role to play so far as the workmen are concerned and everything was supervised and controlled by the respondent department, the workers had been working for a long time in the establishment of the respondent in its premises, leaves used to be sanctioned by the respondent, compensatory leaves were also given to the workers by the respondent and the attendance of the workers also used to be marked by the respondent. All these facts would show that the contract was sham, nominal and a mere camouflage. In Steel Authority of India Ltd. and others Vs. National Union Waterfront Workers and others, (2001) 7 SCC-1, the Hon'ble Apex Court has held that If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer. The relevant extract of the aforesaid judgment reads as under:

> "125 (5) On issuance of prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the concerned establishment subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder".

In the present case, as observed earlier, it has been proved on record that the so called contract is not genuine but a mere camouflage as such the workers of the petitioner union will have to be treated as the employees of the principal employer i.e the respondent department and these workers fall under the definition of "workman" as per section 2 (s) of the Act.

27. It has been proved on record that the workers in question had been in continuous service for a long time and definitely for more than one year. It is also not disputed that the concerned workers have completed more than 240 days in each calendar year. It has been contended on behalf of the petitioner that more than 100 workmen were employed on an average per working day for the preceding 12 months by the respondent department and the respondent department being an industry is registered under the Factories Act, 1948 (hereinafter referred as to Factories Act) and falls under the definition of Factory as defined under clause (m) of section 2 of the Factories Act as such the provisions of section 25- N of the Act attracted to the present case. The aforesaid contention of the learned counsel for the petitioner is strengthened from the cross-examination of RW-1 wherein he has admitted that the department used to engage approximately 230 to 250 workers for doing the work and no notice under section 25-N of the Act was issued to the workers. Since, the workers in question had been in continuous service for

more than one year, hence, before terminating their services, it was incumbent upon the respondent to have complied with the provisions of section 25-N of the Act which lay down certain conditions precedent to the retrenchment of a workman (workmen) and requires the employer to comply with those conditions. However, in the present case, the perusal of the record shows that the respondent has failed to comply with the provisions of section 25-N of the Act. At this juncture, it would be relevant to reproduce relevant part of section 25-N of the Act which reads as under:

(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,—

(*a*) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

(*b*) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf……..

28. In the present case also the respondent has not complied with the conditions precedent to the retrenchment as per section 25-N of the Act before terminating the services of the workers in question. Hence, in view of my foregoing observations, I have no hesitation in holding that the removal from the service by verbal orders of 15 workers of petitioner union by the respondent without complying with the provisions of the Act, is illegal and unjustified. Accordingly, both these issues are decided in favour of the petitioner and against the respondent.

Issue no.2

29. Since, I have held under issues no.1 & 3, above that the removal from the service by verbal orders of 15 workers of petitioner union by the respondent without complying with the provisions of the Act, is illegal and unjustified, hence, the aforesaid 15 workers are held entitled to reinstatement in service with seniority and continuity. The entitlement, if any, for regularization of the workers of the petitioner union shall be considered and processed by the respondent in accordance with the policy of State Government.

30. Now, the question which arises for consideration, before this Court is as to whether the worker of petitioner union are entitled to full back wages as contended by the learned counsel for the petitioner. In (2009) 1 SCC 20, Kanpur Electricity Supply Company Limited Vs. Shamim Mirza, the Hon'ble Supreme Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla that full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

31. Moreover, the workers of the petitioner were under an obligation to prove by leading cogent evidence that they were not gainfully employed after their removal from

services. The initial burden is on the workers to show that they were not gainfully employed as held by the Hon'ble Apex Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another Vs. S.C Sharma that:

> "16……..When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim……."

32. In the present case, the workers of the petitioner union have failed to discharge their burden by placing any material on record that they were not gainfully employed after their removal. Therefore, in view of the entire evidence, on record, coupled with the rulings (supra), I have no hesitation in holding that the workers of petitioner union are not entitled to any back-wages. Accordingly, issue no.2 is partly decided in favour of the workers of petitioner union and against the respondent.

Relief.

As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioner union succeeds and is hereby allowed with the result, all the 15 workers of the petitioner union as per the list enclosed as Annexure A with the reference are ordered to be reinstated in service forthwith with seniority and continuity but without back-wages. It is made clear that the entitlement, if any, for regularization of the workers of the petitioner union shall be considered and processed by the respondent in accordance with the policy of State Government. The reference is ordered to be answered in favour of the petitioner union and against the respondent. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 2nd day of July, 2016.

(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P).

Reference no. 36 of 2014.

Instituted on. 10.4.2014.

Decided on 30.6.2016.

Jaiwanti D/o Shri Khiwan Ram presently working at Attendant Balika Ashram Durgapur, Tehsil & District Shimla. . .*Petitioner*.

Vs.

1. Kasturba Gandhi National Samarak Trust Nidhi Head Office Kasturba Gram Indore, Madhya Pradesh through its Trustee.

2. Kasturba Gandhi National Samarak Trust Nidhi, Himachal Branch, Rockwood, Shimla through its representative Smt. Prem Lata.

3. Kasturba Balika Ashram Durgapur, Tehsil & District Shimla HP through its Incharge one of branch of Sarvodya Bal Ashram Rockwood, Shimla. . .*Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri R.K Khidtta, Advocate.

For respondents: Shri S.D Sharma, Advocate.

AWARD

The following reference has been sent by the appropriate government for adjudication:

"Whether termination of the services of Ms. Jaiwanti D/o Shri Khiwan Ram R/o VPO Chanawag via Dhami, Tehsil Sunni, District Shimla HP during December 2012 by the Trustee/Pratinidhi, Kasturba Gandhi Rashtriya Samarak, Trust Nidhi HP Branch Kasturba Gandhi Bal Ashram, Rockwood Estate, Shimla HP without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. Briefly, the case of the petitioner is that she had studied up-to 10+2 and thereafter she was engaged as attendant (Sahayika) in Kasturba Gandhi Rashtriya Samarak Trust Nidhi, Himachal Branch on 1.12.2010 and after her appointment, she was kept in the office of respondent no.2 and then she was ordered to be posted at Balika Ashram Durgapur where she worked till 31.1.2012 to the entire satisfaction of the respondents. It is further stated that vide letter dated 1.12.2012, the designation of the petitioner from attendant was changed to cook (pachika) without any intimation and without taking the petitioner into confidence but despite having no knowledge in the field of cooking, she accepted the post of cook with the respondents. The respondent no.2 issued another letter on 6.2.2012 not to repeat same mistake with a view to harass the petitioner upon which she (petitioner) humbly submitted to withdraw the letter but of no avail. Thereafter, the respondent no.2 had issued letter dated 15.5.2012 to the petitioner wherein it has been written that a daily wage worker can be given any work and even the petitioner vide reply dated 28.5.2012 has stated that she had not violated any orders passed by respondents no.2 & 3 and also clarified that she had not refused to work as cook. Then in response to the letter of the petitioner, the respondent no.2 again wrote to the petitioner vide letter dated 5.6.2012, that her behavior and work was not satisfactory. However, it is submitted that not even a single instance of alleged misbehavior and satisfaction of work was mentioned in the letter and as such the act of writing letters and creating evidence in favour of respondents was intentional and malafide act and even the petitioner vide letter dated 12.6.2012 refuted all the allegations of respondent no.2. Not only this, the respondents through its representative Smt. Prem Lata started to keep grudge with the petitioner and also started to harass and coerce the petitioner on one count or other. The respondents without there being any plausible cause were trying to terminate the services of the petitioner and asked her not to come on work in case she was not interested to work against the post of cook but the petitioner in order to avoid any litigation, continued to work with the respondents as per their directions and orders. It is also stated that smt. Prem Lata being the representative of respondent no.2 wrote a letter dated 2.7.2012 to the petitioner calling upon her that she should search for another job which clearly shows that the

respondent no.2 was not interested to keep the petitioner in job and thereafter vide letter dated 28.12.2012, sent to the petitioner through registered post, has passed the orders for termination of petitioner. Along-with this letter three month's honorarium in the shape of demand draft has also been sent to the petitioner. Such action of the respondents is not only against the mandate of service jurisprudence but has been passed in hot haste in order to debar the petitioner from her job without issuing any notice and paying compensation as required under section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred as to Act). The respondents have no power to terminate the services of the petitioner especially when the work and funds are available with the respondents. The petitioner had approached the respondents for her re-engagement but of no avail. Against this back-drop a prayer has been made that the retrenchment/termination of the services of the petitioner be declared illegal and further direct the respondents to re-engage her as attendant at the same place and in the same capacity as she was working prior to disengagement w.e.f. 28.12.2012 with all consequential service benefits including back-wages.

3. By filing reply, the respondents had contested the claim of the petitioner wherein preliminary objections have been taken qua maintainability as the respondents trust is not an industry and that the reference/claim is bad for mis-joinder of parties. On merits, it has been denied that the petitioner was engaged as attendant as no appointment letter was issued by the trust. It is submitted that that at the request of the petitioner, she had been permitted to work at Ashram to do all kind of works and an honorarium of ₹ 3500/- was paid per month. It is denied that the petitioner had worked to the entire satisfaction of the respondents. However, it is submitted that in accordance with need of the hour, the workers at the Ashram have to perform their work. It is denied that there was any change of post of petitioner from attendant to cook. The petitioner indulged herself in absenteeism, indiscipline as at some time she would take half day leave but would not return till full day and then mark her presence in the attendance register. It is denied that the petitioner was mentally tortured and harassed by respondent no.2 and that her services have been wrongly and illegally terminated by the respondents. It is further denied that the action of the respondents is liable to be set-aside and that the provisions of section 25-F of the Act are attracted. However, it is submitted that there was no requirement of issuing any notice under section 25-F of the Act to the petitioner as there is no industrial dispute involved in the present case. It is denied that the respondents have no right to terminate the services of the petitioner and even due honorarium was paid to her vide cheque dated 22.4.2013 amounting to ₹ 31,500/- which was duly received by her. The respondents prayed for the dismissal of the claim petition.

4. By filing rejoinder, the petitioner reaffirmed her allegations by denying those of the respondents.

5. Pleadings of the parties give rise to the following issues which were struck on 1.7.2015.

9. Whether the termination of the services of the petitioner during the year December, 2012 by the respondents without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged? . .*OPP.*

10. If issue no.1 is proved in affirmative to what relief of service benefits the petitioner is entitled to? . .*OPP.*

11. Whether the petition is not maintainable as alleged? . .*OPR.*

12. Whether the respondent trust is not industry? . .*OPR.*

13. Whether the reference/claim is bad for mis-joinder of parties as alleged? . .*OPR.*

14. Relief.

6. Besides having heard the learned counsel for the parties, I have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1 Yes.

Issue no.2 Entitled to re-instatement in service with seniority and continuity but without back-wages.

Issue no.3 No.

Issue no.4 No.

Issue no.5 No.

Relief. Reference answered in favour of the petitioner and against the respondents per operative part of award.

Reasons for findings.

Issue no.1.

8. The learned counsel for the petitioner contended that from the very beginning the services of the petitioner had been engaged as attendant by the respondents but after some time her designation was changed as cook without her consent. He further contended that the services of the petitioner had been terminated by the respondents without following the mandatory provisions of the Act as before terminating her services neither any notice was given to her nor any enquiry was got conducted despite the fact that she had worked continuously without any break and completed more than 240 working days in each calendar year. He further contended that juniors to the petitioner are still working with the respondents whereas her services had been terminated in contravention of the provisions of the Act.

9. On the other hand, learned counsel for the respondents contended that the respondents being the charitable trust does not fall under the definition of "industry". Therefore, it was not necessary for the respondents to conduct any enquiry before terminating the services of the petitioner and even it was not necessary for the respondents to have complied with the provisions of the Act before terminating the services of the petitioner. He further contended that in accordance with need of the hour, the workers of the respondents have to perform all types of work, hence, there is no question regarding the appointment of petitioner as attendant.

10. Coming to issue no.1, the petitioner has examined five PWs including herself. Petitioner herself appeared into the witness box as PW-1 to depose that she had been engaged as Attendant by the respondents and initially she had been engaged at Kasturba Gandhi National Samark Trust Rockwood, Shimla and thereafter she had been sent to Balika Ashram. She had worked as attendant till 1.2.2012 but thereafter she was asked to work as cook but she had no experience of cooking. She requested the respondents to take the work of attendant and not refused to work as cook. She requested the respondents to change her designation upon which the respondents started harassing her and also issued a letter to her wherein she was asked to search the job elsewhere. Ultimately, on false charges her services had been terminated by the respondents on 28.12.2012. No notice was served before terminating her services. Neither any

enquiry had been conducted nor she was paid compensation. Thereafter, she raised a demand notice and during conciliation, the respondents agreed to take her in job and as such she submitted her joining mark X-1 but upon that Smt. Prem Lata had told her that she did not want to take such type of joining and after that she (petitioner) had been sent to Durgapur Ashram where she had not been permitted to mark her presence on the attendance register and only her name was written, the copies of attendance register are mark X-2 to X-4. She was not permitted to mark her attendance despite repeated requests and even the staff working at Durgapur Ashram had issued a certificate mark X-5 in her favour stating therein that her work and conduct was very good. Thereafter, she received a letter Ex. PW-1/A which, was sent by the respondents and her termination letter is Ex. PW-1/B. The work for which she was engaged, is still available with the respondents and in her place one Smt. Anita had been engaged. Her services had been terminated illegally by the respondents and after her termination, she is un-employed. In cross-examination, she admitted that the respondents trust is a charitable trust. She admitted that she had not received any call letter from the respondents. No appointment letter qua engaging her as attendant had been issued. When she started working as cook, she refused to take the wages as her designation was shown as cook instead of attendant. She denied that the respondents had not designated her as attendant which she created herself and that she used to remain absent for full day after taking the leave for half day. She admitted that on 20.2.2012, all the workers of Durgapur Ashram came to Shimla and the amount as mentioned in letter dated 24.5.2013, mark DX had been received by her. She denied that after conciliation she had not joined at Ashram. She denied that her claim is false and she is not entitled to any relief.

11. PW-2 Shri Rajesh Chauhan, Labour Inspector has stated that prior to the demand notice, the petitioner had also filed a complaint Ex. PW-2/A dated 21.12.2012 upon which the parties were summoned and the matter was settled regarding which the respondents had given a writing Ex. PW- 2/B. Thereafter, the petitioner raised demand notice Ex. PW-2/C and then the parties were summoned and after the failure of conciliation, failure report Ex. PW-2/D was sent to the appropriate government. In cross-examination, he admitted that the reply to demand notice Ex. RA was filed by the respondents.

12. PW-3 Smt. Anita has stated that she was engaged as Aaya by the respondents at Kasturba Balika Ashram Durgapur and she is working as attendant. The petitioner was initially engaged as attendant and thereafter as cook. The work and conduct of the petitioner was good and she used to perform all the work as per the satisfaction of respondents and she never incited any other co-worker against the respondents. In cross-examination, she admitted that both the Ashram of the respondents at Shimla as well as Durgapur are engaged in charitable activities and for the benefits of the children in Ashram, the workers used to perform all type of works assigned to them and she also used to work as cook in case the official cook was on leave and except the supervisory staff, all other workers get the same wages.

13. PW-4 Ms. Nirmala Devi has stated that the petitioner, was initially engaged as attendant and thereafter as cook. The copy of attendance register for the month of March, 2013 is Ex. PW-4/B and copy of attendance register for the month of Jan., 2013 is Ex. PW-4/C and as per record letter Ex. PW-4/D is correct. In cross-examination, she admitted that due to the long leave of regular cook, the petitioner was made as cook and she refused to take honorarium only on the ground that she was not engaged as cook.

14. PW-5 Shri Hari Singh has produced the copy of pay bill dated 31.7.2011 Ex. PW-5/A, the copy of pay bill dated 31.8.2012 Ex. PW-5/B and the copies of pay bills dated 1.1.2011 to 31.7.2012 Ex. PW-5/C. Ex. PW-5/D to Ex. PW-5/F are the copies of bank account statement in which the money had been deposited in the name of Ashram. Ex. PW-5/G to Ex. PW-5/L, are the copies of expenditure statement of Durgapur Ashram. In cross-examination, he denied that

as on date the Ashram is being run on charitable basis but explained that w.e.f. the year, 2008, the same was running on project basis.

15. On the other hand, the respondents have examined RW-1 Shri Hari Singh Verma, who stated that the petitioner was engaged on 1.12.2010 initially at Shimla Ashram to look-after the work and thereafter she had been engaged at Durgapur Ashram as Cook. All the workers of Ashram used to do all the works assigned to them and all the workers were being paid wages @ ₹ 3500/- per month. The petitioner had not taken her honorarium for 8-9 months which amounts to misconduct and indiscipline and even the petitioner had gone on strike along-with other workers on 2.2.2012. After conciliation before the conciliation officer, Shimla the petitioner had not joined at Durgapur Ashram despite issuance of reminders. The honorarium of petitioner amounting to `31500/- and a sum of ₹ 5,250/- in lieu of notice had been paid to her. In cross-examination, he denied that he was not authorized to depose in this case and that he was not authorized by the Trust to depose in this case. He admitted that vide letter Ex. PX, their Trust is Government aided but denied that as per Ex. PX the salary of the workers was being received from the government. He admitted that the workers at Ashram were working 24 hours and they are paying the salary to the workers as per letter Ex. PX. He denied that the petitioner was engaged on 1.12.2010 as attendant. He admitted that as per Ex. PW-5/A, the petitioner was working as attendant at Durgapur Ashram and that she had worked as attendant w.e.f. 1.12.2010 to 31.1.2012. He further admitted that an order had been issued to petitioner to work as cook w.e.f. 1.12.2012. No consent had been taken by the Ashram from petitioner to depute her as cook from attendant. He denied that the services of the petitioner had been terminated vide letter dated 28.12.2012 Ex. PW-1/B but volunteered that she had abandoned the job. He admitted that no letter had been issued to the petitioner to call her back on duty and no chargesheet had been issued and no enquiry was conducted. He further admitted that demand notice Ex. PW-2/C was raised by the petitioner upon which a settlement Ex. PW-2/B took place between the parties. He denied that after conciliation the petitioner had come to join at Durgapur Ashram. He admitted that no notice and compensation has been given to the petitioner and that the work of the petitioner remained always satisfactory. He admitted that after the dis-engagement of the petitioner, new worker was appointed. He further admitted that the work which was taken from the petitioner is still available with them.

16. I have closely scrutinized the entire evidence on record and from the closer scrutiny thereof, it has become clear that the petitioner had worked with the respondents' w.e.f. 1.12.2010 till 28.12.2012. It is also not disputed that the petitioner has completed 240 working days in each calendar year and also in twelve months preceding her termination. The case of the petitioner is that initially she was engaged as attendant by the respondents but thereafter she was forced to work as cook and her designation was changed from attendant to cook and thereafter during the month of December, 2012 her services have been terminated by the respondents without following the mandatory provisions of the Act. Whereas, the contention of the respondents is to the effect that the petitioner was never appointed as attendant and the workers working with the respondents had to perform all types of work in accordance with the instructions of the respondents.

17. Therefore, the first question before this Court is as to whether the services of the petitioner had been engaged as attendant or cook by the respondents. To prove this fact, the petitioner has examined PW-3 Smt. Anita, PW-4 Nirmala Devi, Superintendent, who have categorically stated that initially the petitioner was engaged as attendant by the respondents and thereafter as cook. PW-5 Shri Hari Singh Verma has brought on record the copies of pay bill registers Ex. PW-5/A to Ex. PW-5/ C. The perusal of pay bill register dated 31.7.2011 Ex. PW-5/A, shows that the name of the petitioner was recorded at serial no.4 and her designation was shown as attendant. In pay bill register dated 31.8.2012, Ex. PW-5/B, the designation of the

petitioner has been changed to cook (pachika). In the pay bill register Ex. PW-5/C, for some months the designation of the petitioner has been shown as attendant, however, for some other months, her designation has been shown as cook. Even, RW-1 has admitted in his cross-examination that the petitioner had been engaged as attendant at Durgapur Ashram and worked as attendant with the respondents w.e.f. 1.12.2010 till 31.1.2012 and w.e.f. 1.2.2012 she had been directed to work as cook. He also admitted that no consent was obtained from the petitioner when she was asked to work as cook from the attendant. The respondents have failed to lead any satisfactory and cogent evidence to show that under what circumstances, the designation of the petitioner has been changed from attendant to cook. Therefore, from the perusal of the entire evidence on record, I have no hesitation in holding that initially the services of the petitioner had been engaged by the respondents as attendant and thereafter she was directed to work as cook.

18. The petitioner as PW-1 has categorically stated that her services had been terminated illegally by the respondents without following the mandatory provisions of the Act. From the perusal of record, it is clear that the petitioner had worked with the respondents continuously w.e.f. 1.12.2010 to 28.12.2012 and thereafter vide letter dated 28.12.2012 Ex. PW-1/B, her services had been terminated. The perusal of letter Ex. PW-1/B shows that the services of the petitioner had been terminated on the allegation that she had refused to work as cook and failed to obey the orders of the respondents as such her services have been terminated. However, from the evidence on record, it has become clear that the petitioner had never refused to work as cook and always worked upto the satisfaction of her superiors. PW-3, categorically stated that the work and conduct of the petitioner was satisfactory and she used to perform all the works as per the satisfaction of the respondent. PW-4, also deposed categorically that the work of the petitioner was satisfactory. In cross-examination, she admitted that though the petitioner was aggrieved on account of the fact that she was directed to work as cook but despite that she was doing the work of cook. RW-1 also admitted in cross-examination that the petitioner had no diploma or experience in cooking. He also admitted in cross-examination that the work of the petitioner was always satisfactory. Admittedly, neither any show cause notice was issued to her nor any enquiry was conducted before terminating her from services. RW-1, admitted in cross-examination that before terminating the services of the petitioner neither any chargesheet was issued to her nor any enquiry was conducted against her. It is settled legal proposition that a workman, against whom misconduct is alleged, cannot be dismissed or discharged unless a proper domestic enquiry is held against him in respect of the alleged misconduct. Even, if there is proved misconduct against the workman, he cannot be dis-charged or dismissed from service unless he has been afforded reasonable opportunity of being heard before initiating any action against him by the employer/respondent. There is nothing on record to suggest that any opportunity of being heard was afforded to the petitioner before terminating her services. The petitioner was never asked to answer any charges as no chargesheet was issued to her and no enquiry was conducted before terminating her services on the basis of alleged misconduct. Since, the petitioner had completed 240 days in twelve calendar months preceding her termination, a reasonable opportunity of being heard should have been afforded to her and proper enquiry should have been held before terminating her services. In D. K Yadav Vs. M/s J.M A Industries Ltd. as reported in 1993-1 Supreme Court Service Law *Judgments -221*, the Hon'ble Apex Court has held as under:

> *"Reasonable opportunity be given to the employee concerned to put forth his case and proper enquiry be held before terminating his service."*

In a recent judgment of our Hon'ble High Court in ILR-XLV (VI) 938 titled as Gurcharan Singh Deceased through his LR's Vs. State of HP and ors. the Hon'ble High Court has held that termination could not have been ordered without conducting any enquiry as the workman had completed 240 days and was therefore entitled to the enquiry. The relevant portion of the aforesaid judgment reads as under:

"8. The moot question is whether termination can be ordered without conducting any inquiry? The answer is in the negative for the following reasons:

9. ……..

10. While going through the impugned award and the writ petition, one comes to an inescapable conclusion that the termination of deceased Gurcharan Singh was made without following the mandate of law.

11. ……..

12. …….

13. In the instant case, deceased Gurcharan Singh had completed 240 days in a calendar year, as discussed and held by the Labour Court, after scanning the evidence, the inquiry was required, not to speak of only issuance of the notice.

Since, the petitioner had completed 240 working days in each calendar year preceding her termination, hence, before terminating her services, it was incumbent upon the respondents to have conducted the enquiry regarding her alleged disobeying the orders and refusal to work as cook. Moreover, the provisions of section 25-F of the Act lay down certain conditions precedent to the retrenchment of a workman (workmen) and requires the employer to comply with those conditions as per clauses (a) to (c) which are mandatory in nature. However, in the present case, the perusal of the record shows that the respondent has failed to comply with the provisions of section 25-F of the Act. In (2015) 4 SCC 544, Mackinnon Mackenzie and Company Ltd., Vs. Mackinnon employees Union, the Hon'ble Apex Court has held as under:

"34. ……The Industrial Court after examining the facts and evidence on record has rightly answered the question of breach of Section 25F clause (b) in the negative since no evidence has been produced by the respondent-Union to prove the same and further no calculation is brought to our notice as to the amount received by way of retrenchment compensation and also the actual amount sought to have been paid to the retrenched workmen. Further, with regard to the provision of Section 25F clause (c), the appellant-Company has not been able to produce cogent evidence that notice in the prescribed manner has been served by it to the State Government prior to the retrenchment of the concerned workmen. Therefore, we have to hold that the appellant-Company has not complied with the conditions precedent to retrenchment as per Section 25F clauses (a) and (c) of the I.D. Act which are mandatory in law."

19. In the present case also the respondents have not complied with the conditions precedent to the retrenchment as per section 25-F of the Act before terminating the services of the petitioner. RW-1 also admitted in cross-examination that neither any notice was issued to the petitioner nor any compensation was paid to her before terminating her services.

20. The learned counsel for the petitioner also contended that after the termination of the services of the petitioner, the respondents trust engaged fresh/new person in her place in violation of the provisions of section 25-H of the Act. RW-1, admitted in cross-examination that after the retrenchment of the petitioner a new worker has been engaged. He also admitted that the work which the petitioner was doing is still available with the respondents and even the funds are available for paying wages to the workers. No material, whatsoever, has been produced on record by the respondents to show that any opportunity was given to the petitioner for re-employment at the time of engaging the new worker. Therefore, from the aforesaid evidence, it is clear that

after the termination of the services of the petitioner, the respondents had engaged fresh worker without giving any opportunity to the petitioner for re-employment in violation of section 25-H of the Act.

21. Hence, In view of the law laid down by the Hon'ble Supreme Court (supra) and my foregoing observations, I have no hesitation in holding that the termination/disengagement of the services of the petitioner during the month of December, 2012 by the respondents without conducting any enquiry and without complying with the provisions of the Act, is illegal and unjustified. Accordingly, issue no.1 is decided in favour of the petitioner and against the respondents.

Issue no.2.

22. Since, I have held under issues no.1 above that the termination of services of the petitioner by the respondents without following the provisions of the Act is improper, illegal and unjustified, hence, the petitioner is held entitled to reinstatement in service with seniority and continuity.

23. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the learned counsel for the petitioner. In (2009) 1 SCC 20, Kanpur Electricity Supply Company Limited Vs. Shamim Mirza, the Hon'ble Supreme Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla that full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

24. Moreover, the petitioner was under an obligation to prove by leading cogent evidence that she was not gainfully employed after the termination of her services. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the Hon'ble Apex Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another Vs. S.C Sharma that:

> "16……..When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim……."

25. In the present case, the petitioner has failed to discharge her burden by placing any material on record that she was not gainfully employed after her termination/disengagement. Therefore, in view of the entire evidence, on record, coupled with the rulings (supra), I have no hesitation in holding that the petitioner is not entitled to any back-wages. Accordingly, issue no.2 is partly decided in favour of the petitioner and against the respondents.

Issue no.3.

26. In support of this issue, no evidence has been led by the respondents which could go to show that this petition is not maintainable especially when the same was filed by the

petitioner pursuant to reference sent by the appropriate government to this Court for adjudication. Therefore, by holding it to be maintainable, this issue is decided in favour of the petitioner and against the respondents.

Issue no.4

27. The learned counsel for the respondents contended that the respondents being the charitable trust does not fall under the definition of "industry" and the workers working in the trust also do not fall within the category of "workman". Now, firstly, it has to be seen as to whether the respondents trust falls in the definition of industry or not. At this juncture, it would be relevant to reproduce section 2(j) of the Act which reads as under:

> **"industry" means any systematic activity carried on by cooperation between any employer and his workmen (whether such workmen are employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature), whether or not".**

The industry is explained as an activity where there is, (i) systematic activity, (ii) organized by Co-operation between employer and employee, (iii) for the production and distribution of goods or services calculated to satisfy human wants or wishes. The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer and employees relationship. In Banglore Water Supply & Sewerage Board Vs. A Rajappa and others, (1978) 2 S.C.C. 213, it has been observed that the charitable institutions falls into three categories as under:

> "104 The first is one where the enterprise, like any other, yields profits but they are siphoned off for altruistic objects. The second is one where the institution makes no profit but hires the services of employees as in other like businesses but the goods and services, which are the output, are made available, at low or no cost, to the indigent needy who are priced out of the market. The third is where the establishment is oriented on a humane mission fulfilled by man who work, not because they are paid wages, but because they share the passion for the cause and derive job satisfaction from their contribution. The first two are industries, the third not. What is the test of identity whereby these institutions with eleemosynary inspiration fall or do not fall under the definition of industry?"

In the present case, RW-1 categorically stated that the respondents trust runs two Ashrams i.e Sarvoday Bal Ashram at Shimla and Kasturba Gandhi Balika Ashram at Durgapur and both the Ashrams are working for the upliftment of the orphan children who are deprived of parental care. However, at the same time, he admitted in cross-examination that the trust is government aided as per Ex. PX and they receive the salary from the government for four workers. He further admitted that the workers deployed in the Ashram used to work for 24 hours and they used to be paid wages as per document Ex. PX. He also admitted that as per document Ex. PX, the salary of cook is ₹ 7500/-. Therefore, in view of the entire evidence on record, it can safely be held that the respondent trust though might not be making any profit but hires the services of the employees as in other like business as such the trust falls within the definition of "industry". So far as the employees working in such institutions are concerned it has been held in Banglore Water Supply's case (Supra) that these employees contribute labour in return for wages and conditions of service and industrial law does not take note of such extraneous factors but regulates industrial relations between employers and employers and workmen and

workmen and workmen. From the point of view of the workmen there is no charity and for them the charitable employer is exactly like a commercial- minded employer. The relevant extract of the aforesaid judgment is reproduced as under:

> "107. The second species of charity is really an allotropic modification of the first. If a kind- hearted businessman or high-minded industrialist or service-minded operator hires employees like his non-philanthropic counter-parts and, in co-operation with them, produces and supplies goods or services to the lowly and the lost, the needy and the ailing without charging them any price or receiving a negligible return, people regard him as of charitable disposition and his enterprise as a charity. But then, so far as the workmen are concerned, it boots little whether he makes available the products free to the poor. They contribute labour in return for wages and conditions of service. For them the charitable employer is exactly like a commercial- minded employer. Both exact hard work, both pay similar wages, both treat them as human machine cogs and nothing more, The material difference between the commercial and the compassionate employers is not with reference to the workmen but with reference to the recipients of goods and services. Charity operates not vis-a-vis the workmen in which case they will be paying a liberal wage and generous extras with no prospect of strike. The beneficiaries of the employees charity are the indigent consumers. Industrial law does not take note of such extraneous factors but regulates industrial relations between employers and employers and workmen and workmen and workmen. From the point of view of the workmen there is no charity. For him charity must begin at home. From these strands of thought flows the conclusion that the 'second group may legitimately and legally be des- cribbed as industry. The fallacy in the contrary contention lies in shifting the focus from the worker and the industrial activity to the disposal of the end product. This law has nothing to do with that. The income-tax may have, social opinion may have."

In the present case also as observed earlier the workers deployed in the Ashram used to work for 24 hours and they contribute labour in return for wages and conditions of service. Hence, in view of the entire evidence on record, it can safely be held that the petitioner falls under the definition of "workman" as per section 2(s) of the Act. Accordingly, this issue is decided in favour of the petitioner and against the respondents.

Issue no.5.

28. The onus to prove this issue was on the respondents, however, neither any evidence has been led nor any arguments have been advanced by the learned counsel for the respondents to prove this issue as such the same is decided in avour of the petitioner and against the respondents.

Relief.

As a sequel to my above discussion and findings on issues no.1 to 5, the claim of the petitioner succeeds and is hereby allowed with the result, the petitioner is ordered to be reinstated in service with seniority and continuity. However, the petitioner is not entitled to any back-wages and as such the reference is ordered to be answered in favour of the petitioner and against the respondents. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 30th day of June, 2016.

(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

30.7.2016.

Present: None for the petitioner.
Ms. ReenaChauhan, Dy. DA for respondent.

Case called twice but none appeared on behalf of the petitioner. It is 10:50 AM. Be called again.

(SUSHILKUKREJA),
Presiding Judge,
Labour Court, Shimla.

Case called again.

Present: None for the petitioner.
Ms. ReenaChauhan, Dy. DA for respondent.

It is 12:55 PM case called again but none appeared on behalf of the petitioner. Be called after lunch.

(SUSHILKUKREJA),
Presiding Judge,
Labour Court, Shimla.

Case called after lunch.

Present: None for the petitioner.
Ms. ReenaChauhan, Dy. DA for respondent.

It is 3:25 PM. Case called repeatedly in pre and post lunch sessions but none appeared on behalf of the petitioner despite the fact that for today the case has been fixed for the evidence of the petitioner but neither the petitioner nor any evidence is present on his behalf. Since, the petitioner has failed to appear before this Court, I have left with no other alternative but to proceed further to decide the reference on the basis of material whatsoever is available on the file. The reference sent by the appropriate government for adjudication is as under:

"Whether termination of services of Shri Narain Singh S/o Shri Mohi Ram R/o Village Bhuwari, P.O Shivpur, Tehsil Sangrah, District Sirmour, HP by the Executive Engineer, HPPWD Division Sangrah, District Sirmour, HP during the year, 1989 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in-view the delay of about 17 years in raising he Industrial dispute, what amount of back wages, seniority, past service benefits and compensation the aggrieved workman is entitled to from the above employer?"

On the receipt of reference, as above, the notices were issued to the parties and subsequently on 24.9.2015, the claim petition was filed by the petitioner wherein it has been stated

that he was engaged in HPPWD Division Haripudhar(now Sangrah) in the year 1984 and his services were disengaged in the year, 1989 without complying with the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as Act) as neither any notice nor any compensation was given to him. It is further stated that the petitioner had completed 240 days in each calendar year and the respondent had violated the principles of "last come first go" as other persons who were working with him had been retained by the respondent. In the aforesaid back-ground, the petitioner prayed for his reinstatement along-with all the consequential service benefits.

The respondent contested the claim of the petitioner by filing detailed reply wherein preliminary objections have been taken qua barred by limitation, maintainability, res-judicata and that the petitioner used to leave the work at his own sweet will. On merits, it has been asserted that the services of the petitioner had been engaged as beldar on daily wages basis during the year, 1979 whose services had never been disengaged but he himself left the job at his own and he had failed to complete 240 days in any year. Since, the petitioner had left the job at his own,and his contemporaries remained continue to work with the respondent department as such the question to comply with the principles of "last come first go" does not arise at all. That the petitioner approached at belated stage during the year, 2009 after a gap of more than 20 years and is not entitled for any claim sought under the claim petition. The respondent prayed for the dismissal of the claim.

Rejoinder not filed.The following issues were framed by this Court on 22.4.2016.

1. Whether the termination of the services of the petitioner during the year 1989 without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged? . .*OPP.*

2. If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled? . .*OPP.*

3. Whether the petition is barred by limitation as alleged? . .*OPR.*

4. Whether the petition is not maintainable as alleged? . .*OPR.*

5. Relief.

6. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1	No.
Issue no.2	Becomes redundant.
Issue no.3	Not pressed.
Issue no.4	No.
Relief.	Reference answered in favour of the respondent and against the petitioner.

Reasons for findings.

Issues no.1.

It may be pertinent to mention here that issues in this case were framed on 22.4.2016 and thereafter, the case was listed for the evidence of the petitioner on 31.5.2016 on which date neither any evidence was present on behalf of the petitioner nor the petitioner or his counsel appeared before this Court and notice was issued to the petitioner through his counsel for 1.7.2016 which was duly received by the counsel of the petitioner and on 1.7.2016 the case was listed for the evidence of the petitioner for today and neither the petitioner nor his counsel appeared before this Court and failed to lead any evidence which clearly shows that the petitioner is not interested to pursue his claim and to lead any evidence. Therefore, in the aforesaid back-ground, this Court is left with no other alternative but the decide the reference on the basis of material whatsoever is available on the file. The case of the petitioner is that his services were terminated without complying with the provisions of section 25-F of the Act as he had completed 240 days in each calendar year. His further case is that the respondent had retained other persons who were working along-with the petitioner in violation of the principles of "last come first go" and also by ignoring the provisions of section 25-H of the Act as the petitioner was not offered employment when new persons were retained. However, to prove his case neither the petitioner appeared himself before this Court nor led any evidence in support of his claim. Moreover, no material has been placed on record by the petitioner in order to show that he was illegally terminated by the respondent without complying with the provisions of the Act. Hence, in the absence of any evidence on record, the issue no.1 is decided against the petitioner and in favour of the respondent.

Issue No.2

Since, the petitioner has failed to prove issue no.1 above, this issue becomes redundant.

Issues no. 3.

It has been stated by Ld. DY. DA, that the respondent does not want to press this issue. Hence, this issue is decided accordingly.

Issue no.4.

In support of this issue, no evidence has been led by the respondent. However, the petitioner has filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Relief.

As a sequel to my above discussion and findings on issues no.1 to 4, in the absence of any evidence on record, claim of the petitioner fails and is hereby dismissed with the result, the reference is answered in favour of the respondent and against the petitioner. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 30th day of July, 2016.

(SUSHILKUKREJA),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P).

Ref. No. 102 of 2006.

Instituted on. 3.8.2006.

Decided on 30.7.2016.

Shyam Lal S/o Shri Rajmal R/o Village Toka Nagla, P.O Jamniwala, tehsil Paona Sahib, District Sirmour, HP. . .*Petitioner.*

Vs.

Municipal Council Paonta Sahib, Tehsil Paonta Sahib, District Sirmour, through its Executive Officer. . .*Respondent.*

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri Rajinder Thakur, Advocate.

For respondent: Shri Ajay Dhiman, Advocate.

AWARD

The following reference has been sent by the appropriate government for adjudication:

> **Whether the termination of services of Shri Shyam Lal S/o Shri Raj Mal workman by the Executive Officer, Municipal Council, Paonta Sahib, District Sirmour, HP w.e.f. year 2004 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?"**

2. In nutshell the case of the petitioner is that he was engaged as meson on daily wage basis in the month of Feb., 1998 by the respondent and worked as such upto September, 2003, when his services had been terminated orally without serving any notice. Thereafter, the petitioner filed an O.A before the Administrative Tribunal in which an interim relief was granted but on the grounds of jurisdiction the petitioner withdrew his OA with the liberty to raise the dispute under Industrial Disputes Act and then a demand notice was raised by him on 22.8.2004 and after the receipt of reference by this Court, notices were issued to the petitioner but despite service, the petitioner failed to appear, the reference was dismissed by this Court. Thereafter an application for restoration of the reference along- with an application for condonation of delay in filing the application for restoration was filed on 5.12.2012 before this Court which was also dismissed. Then the petitioner filed a CWP before the Hon'ble High Court for quashing the order dated 29.12.2006 and order dated 21.3.2014 which was allowed by the Hon'ble High Court. It is further averred that the petitioner had completed 240 days in each calendar year and the breaks given in between Jan., 1999 to August, 2005 would count for purpose of reckoning 240 days of service in terms of section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as Act) and as such the services of the petitioner were terminated without following the proper procedure of law which is against the principles of natural justice. Against the aforesaid back-drop the petitioner has prayed that his oral termination be quashed and set aside by directing the

respondent to re-instate him on his earlier position w.e.f. August, 2005 along-with all consequential service benefits including back-wages.

3. By filing reply, the respondent had contested the claim of the petitioner wherein preliminary objections had been taken qua locus standi and maintainability. On merits, it has been asserted that the petitioner had never completed 240 days in each calendar year and abandoned the job himself, hence, there is no need to give him notice and to comply with the provisions of the Act. It is further asserted that the petitioner had worked with the respondent from Feb., 1998 to September, 2003 with breaks and the dispute raised by the petitioner is an afterthought and had not raised the dispute in time and even no breaks have been given to him in his service. The respondent prayed for the dismissal of the claim petition.

4. Rejoinder filed. Pleadings of the parties gave rise to the following issues which were struck on 29.2.2016.

1. Whether the termination of the services of the petitioner w.e.f. year 2004 by the respondent without complying wit the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged? . .*OPP.*

2. If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? . .*OPR.*

3. Whether the petition is not maintainable as alleged? . .*OPR.*

Relief.

5. Besides having heard the learned counsel for the parties, I have also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1	No.
Issue no.2	Becomes redundant.
Issue no.3	No.
Relief.	Reference answered in favour of the respondent and against the petitioner.

Reasons for findings.

Issues no.1 .

7. Learned Counsel for the petitioner contended that the services of the petitioner were illegally terminated by the respondent without complying with the provisions of the Act as neither any notice was issued nor any enquiry was conducted before terminating his services despite the fact that the petitioner had completed more than 240 working days in each calendar year. He further contended that junior persons to the petitioner and fresh hands are still working with the respondent whereas his services have been terminated in violation of the provisions of section 25-G & 25-H of the Act.

8. On the other hand, Ld. Counsel for the respondent contended that the services of the petitioner have never been terminated, who left the job at his own without intimation to the respondent and even he had not completed 240 working days in any calendar year, hence, there is no need to serve any notice upon him. He further contended that no fresh hands/junior to the petitioner had been retained.

9. To prove his case, the petitioner stepped into the witness box as PW-1 to depose that he was engaged as meson in Feb., 1998 by the respondent and worked as such till July, 2003 and completed 240 days in every year. Neither any notice was issued to him nor he was paid compensation before terminating his services. The respondent had engaged fresh hands namely Naresh, Suresh, Sanjay, Bunty, Pawan, Bharat, Raju etc. who are still working. He filed an O.A before the Administrative Tribunal which was withdrawn on the issue of jurisdiction and thereafter, he raised the demand notice before the Labour-cum-Conciliation Officer, Paonta Sahib on 22.8.2004. In cross-examination, he denied that he had not completed 240 days in any calendar year w.e.f. 1998 to 2003 and that he had voluntarily abandoned his job. He further denied that his brother Shri Om Prakesh is working with the respondent.

10. On the contrary, the respondent examined one Shri Brij Pal Singh, Junior Assistant as RW-1, who has stated that the petitioner had worked with the respondent from the year, 1998 to September, 2003 and had completed 274 days only in the year, 2000. The petitioner had left the job on his own and he had never approached the respondent for his re-engagement. The respondent had not engaged any mason after petitioner till date. The copy of muster roll is Ex. RW-1/A. In cross- examination, he admitted that the petitioner had worked as mason with the respondent from the year, 1998 till September, 2003. He denied that the services of the petitioner had been terminated by the respondent. He denied that the petitioner had approached for his re-engagement but the respondent refused to take him back in job. He admitted that no notice had been issued to the petitioner.

11. I have gone through the respective contentions of the learned counsel for the parties and also closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that the petitioner had worked with the respondent as mason from the year, 1998 till September, 2003 as is evident from the muster roll Ex. RW-1/A. The perusal of muster roll Ex. RW-1/A further goes to show that the petitioner had worked for 195 ½ days in the year, 1998, 188 days in 1999, 274 days in 2000, 232 days in 2001, 206 days in 2002 and 233 days in 2003. Therefore, from the perusal of muster roll Ex. RW-1/A, it is clear that the petitioner had worked with the respondent till September, 2003 and he had only completed 274 days in the year, 2000 and thereafter, he had failed to complete 240 days in any calendar year. There is nothing on record which could show that the petitioner has completed 240 working days in twelve calendar months preceding his termination. In *2009 (120) FLR 1007 incase titled as Relip Nagarpalika Vs. Babuji Gabhaji Thakore and others*, the Hon'ble Supreme Court has held as under:

> **"The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer."**

12. In *AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat V/s Dayabhai Amar Singh, the* Hon'ble Supreme Court has held that:—

> **"In case workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that**

he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated."

A bare perusal of the extract of the judgments produced, hereinabove, shows that the burden to prove completion of 240 days service lies on the workman and this burden is discharged on workman stepping in the witness box and adducing cogent evidence. However, in the instant case, the petitioner has failed to prove on record that he had put in 240 days in twelve calendar months preceding his termination.

13. From the perusal of muster roll, Ex. RW-1/A, it is abundantly clear that the petitioner had not completed 240 working days in the calendar year preceding his termination. Hence, the case of the petitioner does not fall under section 25-F of the Industrial Disputes Act, 1947 and as such no protection of section 25-F can be granted to the petitioner.

14. The learned counsel for the petitioner next contended that at the time of the termination of the petitioner, the respondent had retained his juniors and engaged fresh hands namely Naresh, Suresh, Sanjay, Bunty, Pawan, Bharat, Raju etc. who are still working with the respondent as such the respondent had violated the provisions of section 25-G & H of the Act. However, except for the bald statement of the petitioner, no other evidence has been led by him to prove that the aforesaid persons have been retained/engaged by the respondent. The petitioner has failed to summon/produce any record to prove that the persons junior to him have been retained by the respondent. It was incumbent upon the petitioner to have summoned/produced the record pertaining to the date of appointment of the aforesaid persons and pertaining to the fact that these persons have been retained/engaged by the respondent. However, no such record has either been summoned or produced by the petitioner. Therefore in the absence of any cogent and satisfactory evidence on record, it cannot be said that the respondent had engaged fresh hands and retained juniors to the petitioner as such the case of the petitioner does not fall under section 25-G and 25-H of the Act.

15. Therefore, in view of my foregoing discussion, I have no hesitation in holding that the termination of the services of the petitioner w.e.f. the year, 2004 by the respondent without complying with the provisions of the Act is not illegal and unjustified. Accordingly, this issue is decided in favour of the respondent and against the petitioner.

Issue No.2

16. Since, the petitioner has failed to prove issue no.1 above, this issue becomes redundant.

Issue no.3.

17. In support of this issue, no evidence has been led by the respondent. However, the petitioner has filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Relief.

As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioner fails and is hereby dismissed and as such the reference is ordered to be answered in favour of the respondent and against the petitioner. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 30th day of July, 2016.

(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P).

App. No. 43 of 2012.

Instituted on. 1.10.2012.

Decided on 30.7.2016.

Vinod Kumar S/o Shri Ram Lal Thakur C/o Om Dutt Sharma VPO Taksal, Tehsil Kasauli, Dsitrict Solan, HP. . .*Petitioner.*

Vs.

Proprietor/Factory Manager Ind Swift Ltd., plot no. 23, Sector-2, Parwanoo, District Solan, HP. . .*Respondent.*

Claim petition on behalf of the petitioner under the Industrial Disputes Act.

For petitioner: Shri Niranjan Verma, Advocate.

For respondent: Shri Upender Sharma, Advocate.

ORDER/AWARD

In nutshell the case of the petitioner is that he was appointed as helper on 21.9.2005 by the respondent company and was getting monthly salary of ₹ 3300/- and worked till October, 2010 to the entire satisfaction of the respondent. It is further stated that the petitioner had completed 240 days in a calendar year and the respondent was deducting EPF from the salary of the petitioner but the same was not deposited with the employee provident fund department and his services had been terminated illegally w.e.f. October, 2010 without issuing any notice/chargesheet and that too without paying him the benefits for which he was entitled under the Industrial Disputes Act, 1947 (hereinafter referred to as Act). The petitioner had filed demand notice on 1.6.2011 but despite many conciliation meetings nothing has come out,

hence, the present petition has been filed. It is also stated that the respondent had not paid the benefits and dues such as bonus, salary, gratuity, earned leave and other benefits under the law. Against this back-drop a prayer has been made that he be reinstated in service with all consequential service benefits along-with back-wages.

3. By filing reply, the respondent had contested the claim of the petitioner wherein preliminary objections had been taken qua maintainability, estoppel, barred by limitation and that the petition is bad for non-joinder of necessary party. On merits, it has been asserted that there is no relation of employer and employee between the petitioner and respondent as he was not a direct employee of the company and as per the information, the petitioner was engaged under the contractor ship of Shri Arun Awasthi and the respondent company is a renowned company in the sphere of medicine world and the present petition is a futile effort to disrepute the reputation and good will of the company. The respondent prayed for the dismissal of the claim petition.

4. Rejoinder not filed. Pleadings of the parties gave rise to the following issues which were struck on 23.10.2013.

1. Whether the services of the petitioner were illegally terminated w.e.f. October, 2010 without complying with the mandatory provisions of the Industrial Disputes Act, 1947 as alleged? . .*OPP.*

2. If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? . .*OPR.*

3. Whether this petition is time barred? . .OPR.

4. Whether this petition is bad for non-joinder of necessary parties as alleged? . .*OPR.*

5. Relief.

5. Besides having heard the learned counsel for the parties, I have also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1 No.

Issue no.2 Becomes redundant.

Issue no.3 No.

Issue no.4 Yes.

Relief. Petition dismissed per operative part of order/award.

Reasons for findings.

Issues no.1 .

7. Learned Counsel for the petitioner contended that the services of the petitioner were illegally terminated by the respondent without complying with the provisions of the Act as neither

any notice was issued nor any compensation was paid by the respondent before terminating his services despite the fact that the petitioner has completed more than 240 working days in each calendar year.

8. On the other hand, Ld. Counsel for the respondent contended that the services of the petitioner were never engaged by the respondent company who was employed through contractor, hence, there is no question for respondent company to comply with the provisions of the Act.

9. To prove his case, the petitioner stepped into the witness box as PW-1 to depose that on 2.9.2005, he was engaged as helper by the respondent company and worked as such till October, 2010 on monthly salary of ` 3300/-. Thereafter his services had been terminated without serving any notice and paying compensation. He had completed 240 days in each calendar year and no enquiry had been conducted against him before terminating his services. Then he raised demand notice Ex. PW-1/A which was sent through registered post, the copy of postal receipt is Ex. PW-1/B. The conciliation proceedings were held but of no avail and thereafter, he requested the Conciliation Officer to stop the proceedings vide Ex. PW-1/C, as he wanted to file an application before this Court. His juniors were retained by the respondent and bonus, salary for the month of October, 2010, earned leave and gratuity had not been paid to him by the respondent. Ex. PW-1/D is the copy of his ESI card. He prayed that since he is unemployed, he be reinstated in service with all the consequential benefits along-with back-wages seniority etc. In cross-examination, he denied that he was working with Arun Awasthi (contractor). He admitted that contractor Arun Awashti was not made as party by him in the claim petition. He also admitted that no appointment letter had been issued by the respondent company. He further admitted that he was engaged through contractor. He denied that letter dated 28.9.2010, was issued by the contractor to him. He admitted that being the employee of contractor, he had no concern with the respondent company but explained that the respondent company is bound to pay him his wages and other benefits.

10. On the contrary, the respondent examined one Shri O.P Thapliyal, Vice President, HR as RW-1, who has stated that the petitioner was deployed by the contractor Shri Arun Awasthi and the company used to pay the salary of the petitioner through the contractor. The EPF employee code of the respondent company is HP-18023. The petitioner had got no direct employee and employer relationship with the respondent. In cross-examination, he admitted that the ESI card Ex. PW- 1/D has been issued by the ESI department but denied that the EPF contribution was made by the respondent. He admitted that the demand notice Ex. PW-1/A was sent to the respondent. He denied that the petitioner was their employee and he was engaged on 21.9.2005 and that his services had been illegally terminated by the respondent in October, 2010. He further denied that they have not paid the dues to the petitioner for which he was entitled.

11. I have gone through the respective contentions of the learned counsel for the parties and also closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that the petitioner has failed to establish that he was on the rolls of the respondent company and that his retrenchment was improper and unjustified in violation of the provisions of the Act. It was for the petitioner to bring on record the cogent and satisfactory evidence about his appointment with the respondent company. Admittedly, the petitioner had failed to adduce any evidence such as appointment letter or any other document on record thereby making it evident that he was the employee of respondent company. Rather, in cross-examination, he admitted that he was engaged through contractor and he had no concern with the respondent company being the employee of the contractor.

12. No doubt, the petitioner while appearing in the witness box tendered in evidence the copy of ESI card Ex. PW-1/D. However, when the same is perused, it appears that the same had been issued by the ESI authorities and the name of the respondent company has nowhere been mentioned in the ESI card, hence, no benefit can be derived by the petitioner from the ESI card Ex. PW-1/D. Therefore, in the absence of any documentary evidence on record and also in view of the admission of the petitioner in cross-examination it can safely be said that the petitioner was not the employee of respondent company as such it has been established on record that there is no employee and employer relationship between the petitioner and respondent company. Hence, in view of the entire evidence on record as discussed hereinabove, I have no hesitation in holding that the petitioner was engaged as helper by the respondent company through the contractor.

13. From the perusal of the record, it has become clear that the petitioner has not impleaded the contractor as a party in the petition. It has been admitted by the petitioner that he was engaged through contractor. Therefore, in such a situation, it was incumbent upon the petitioner to have impleaded the contractor as a party. Hence, in view of the aforesaid back-ground, it can safely be concluded that the petition is bad for non-joinder of necessary parties. Accordingly, both these issues are decided in favour of the respondent and against the petitioner.

Issue No.2

14. Since, the petitioner has failed to prove issue no.1 above, this issue becomes redundant.

Issue no. 4

15. The learned counsel for respondent contended that the petition filed by the petitioner is time barred as he has raised the dispute after a gap of two years. However, the law on the point is well settled that no limitation is prescribed either under the Industrial Disputes Act or under the Limitation Act for raising the Industrial Dispute. The Hon'ble Supreme Court in its various judgments has held that the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay. It has been held by the Hon'ble Supreme Court in *in (1999) 6 SCC 82, titled as Ajayab* Singh Vs. Sirhind Co-operative Marketing –cum- processing Service Society Limited and Another, *that:—*

> *"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceedings under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone"*

It has also been held by the Hon'ble Supreme Court in Gurmail Singh Vs. Principal Government College of Education and others, (2009) 9 SCC 496 that mere delay in challenging the termination would not be a bar to the adjudication of the matter but could only deprive the appellant of his back wages for the period of delay in raising the termination issue.

16. Therefore, the aforesaid law declared by the Hon'ble Supreme Court in various context makes the legal position clear that there is no limitation prescribed either under the Industrial Disputes Act or under the Limitation Act for raising the industrial dispute. The provision of Article 137 of the schedule to the Indian Limitation Act, 1963 is not applicable to the proceedings under the Act and the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay. Accordingly, it cannot be said that the petition is time barred and as such this issue is decided in favour of the petitioner and against the respondent.

Relief.

As a sequel to my above discussion and findings on issues no.1 to 4, the claim of the petitioner fails and is hereby dismissed. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 30th day of July, 2016.

(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P).

Ref. No. 45 of 2013.

Instituted on 27.7.2013.

Decided on 29.7.2016.

1. Amrik Singh S/o Shri Kishan R/o Village Bar, P.O Khera Wali, Tehsil Kalka, District Panchkula, Haryana.

2. Pushpinder Kaur W/o Shri Raj Kumar R/o Village Kona, P.O Nanakpur, Tehsil Kalka, District Panchkula, Haryana.

3. Gayatri W/o Shri Narender Chand R/o Village Madwala, P.O Nanakpur, Tehsil Kalka, District Panchkula, Haryana.

4. Babli W/o Shri Bansi Lal, R/o Village Kona, P.O Nanakpur, Tehsil Kalka, District Panchkula, Haryana.

5. Harmesh S/o Shri Gurmel Singh R/o Madawala, P.O Nanakpur, Tehsil Kalka, District Panchkula, Haryana.

6. Vickey S/o Shri Roshan Lal, VPO Barotiwala, Tehsil Baddi, District Solan, HP.

. .*Petitioners.*

Vs.

M/s Maja Personal Care Barotiwala, Baddi, Tehsil Nalagarh, District Solan, HP through its General Manager. . .*Respondent.*

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioners: Shri Shikha Chauhan, Advocate.

For respondent: Already ex-parte.

AWARD

The following reference has been sent by the appropriate government for adjudication:

"Whether implied termination of services of S/Shri Amrik Singh, Vickey, Harmesh, Smt. Pushpinder, Smt. Babli, Smt. Gyatri C/o CITU Are committee, Barotiwala, Tehsil Kasauli, District Solan, HP on 27.1.2010on the pretext of transfer to another unit i.e M/s Maja Unipact at Village Kharuni, Tehsil Nalagarh, District Solan, by the management of M/s Maja Personal Care Barotiwala, Badddi, District Solan, HP is legal and justified? If not, what relief including re-instatement in service, back-wages, seniority, service benefits and compensation the above aggrieved workmen are entitled to from the above employer?"

2. In nutshell the case of the petitioners is that they were engaged as helpers by the respondent as per details given below:

Sr. no.	**Name**	**Worked as**	**Date of joining**	**Last monthly wages.**
1.	Amrik Singh	Helper	1.7.2006	₹ 3600/-
2.	Pushpinder	Helper	1.7.2006	₹ 3200/-
3.	Gayatri	Helper	2.9.2006	₹ 3300/-
4.	Babli	Helper	1.9.2006	₹ 3300/-
5.	Harmesh	Helper	4.4.2006	₹ 3600/-
6.	Vickey	Helper	1.7.2006	₹ 3200/-

All the petitioners served in the respondent concern upto 27.1.2010 and completed more than 240 days in each calendar year but on 21.1.2010, the petitioners have been served with the transfer orders and were transferred from the respondent factory to M/s Maja Unipac which was far distant from the premises of the respondent and would incur ₹ 500 to ₹ 1000/- per month for travelling by the petitioners. The petitioners after receiving transfer orders, requested the respondent not to transfer them but they were not allowed to join the duties which amounts to direct retrenchment. The respondent has thrown mandatory provisions of law to the wind and did not care to respect the law of the country as no enquiry, show cause notice, chargesheet was issued, hence, the dismissal of the services of petitioners is in violation of section 25 of the Industrial Disputes Act, 1947 (hereinafter referred to as Act). Against this back-drop a prayer has been made for their reinstatement in service along-with all consequential service benefits, as per their original appointments.

3. Before, I proceed further, I would like to mention here that the respondent was duly served and one Shri Rakesh, H.R for the respondent appeared before this Court on 4.9.2014 and 22.10.2014 and the case was fixed for filing of reply on behalf of respondent but thereafter the respondent failed to appear before this Court, hence, vide order dated 17.11.2014, the respondent was proceeded against ex-parte. Thereafter, Shri Sandeep Dutta, Advocate appeared for respondent who filed an application for setting aside ex-parte order dated 17.11.2014, which was allowed and the ex-parte order dated 17.11.2014 was set aside and the case was fixed for filing of reply on behalf of respondent. However, after availing repeated opportunities for filing of reply, the respondent failed to appear before this Court and to file reply, hence, the respondent was proceeded against ex-parte vide order dated 17.12.2015.

4. The petitioners stepped in to the witness box as PW-1 to PW-6. PW-1 Shri Amrik Singh has tendered in evidence, his affidavit Ex. PW-1/A wherein he has supported the

entire averments as made in the claim petition including that similarly situated persons are still working with the respondent and after his dismissal he is unemployed. He also tendered in evidence transfer order dated 21.1.2010, Ex. PW-1/B, copy of demand notice Ex. PW-1/C, copy of identity card issued by ESI Corporation Ex. PW-1/D and wage slip Ex. PW-1/E.

5. Petitioner Smt. Pushpinder Kaur appeared into the witness box as PW-2 and tendered in evidence her affidavit Ex. PW-2/A and copy of identity card Ex. PW-2/B. Petitioner Smt. Gyatri appeared in to the witness box as PW-3 and tendered in evidence her affidavit Ex. PW-3/A, identity card Ex. PW-3/B and wage slip Ex. PW-3/C. Petitioner Smt. Babli has stepped into the witness box as PW-4 and tendered her affidavit in evidence Ex. PW-4/A, identity card Ex. PW-4/B and wage slip Ex. PW-4/C. Petitioner Shri Harmesh appeared into the witness box as PW-5 and tendered his affidavit in evidence Ex. PW-5/A, identity card Ex. PW-5/B. Petitioner Shri Vickey appeared into the witness box as PW-6 and tendered his affidavit in evidence Ex. PW-6/A. All the petitioners i.e petitioner no. 2 to petitioner no.6 have supported the averments made by petitioner no.1 in his affidavit Ex. PW-1/A.

6. I have heard the learned counsel for the petitioners and also scrutinized the record of the case minutely.

7. The case of the petitioners is that they were transferred in an arbitrary manner by the respondent to M/s Maja Unipac vide transfer order dated 21.1.2010 and the said concern where the petitioners had been transferred is far distant from the premises of the respondent concern which would cause them great hardship and financial loss.

8. It is true that transfer is an incidence of service and all cases of transfer should not be interfered by the Court. However, at the same time whenever any transfer is ordered which effects the service conditions/ financial entitlement of the petitioners, then the Court may consider to interfere with the same.

9. Undisputedly, the petitioners were working as helpers and were low paid employees drawing monthly wages @ ₹ 3200 to ₹ 3600/- per month. There is no material available on record to indicate that in the service contract between the petitioners and the respondent, there is any stipulation that the petitioners who are the low paid employees are liable to serve anywhere. Neither the certified standing orders of the company nor model standing orders are available on record which contained any provisions or stipulation whereby it could be said that the respondent had the power to transfer the petitioners from one place to the another. Similarly, no rules of the company are available which may provide for the transfer of a low paid workman like the petitioners. In the case of State of Madhya Pradesh Vs. Shankar Lal and others, AIR 1980 SC 643, the issue of transfer of a low paid employee was considered by the Hon'ble Supreme Court. After considering the provisions of the Act and Rules governing in the field, the court came to the conclusion that unless statutory rules put an embargo for transfer of Class-IV or low pad employees, there can be no bar to transfer the said employees.

However, the Court observed that such a power should be exercised sparingly. The relevant observation of the Hon'ble Supreme Court reads as follows:

> "…..Theoretically, therefore, the power does exist in the State Government to transfer them. We must, however, hasten to add that in case of employees getting small emoluments the power seems to the meant to be sparingly exercised under some compelling exigencies of a particular situation and not as a matter of routine. If it were to be liberally exercised, it will create tremendous problems and difficulties in the way of employees getting small salaries……."

10. Therefore, the perusal of the aforesaid judgment shows that in case of class-IV employees or low paid employees, the power of transfer should be sparingly exercised when required under some compelling exigencies of a particular situation and not as a matter of routine. In the present case, the perusal of the transfer order shows that the petitioners have been transferred in a routine manner and there is nothing on record to show that they have been transferred under any administrative exigency. The petitioners are the low paid employees and their transfer to a far distant place would cause them and their families great hardship and make their survival difficult. It has come in the evidence on record that the petitioners have to incur ₹ 1,000/- per month or more for travelling to the new place of posting which would be a direct cut and loss in the present wages of the petitioners.

11. Thus, keeping in view the financial loss to the petitioners and in the absence of any proper administrative reasons to transfer the petitioners, this Court is of the opinion that the transfer order passed by the respondent was issued for oblique reasons and for victimization of the petitioners which amounted to their implied termination as such the same deserves to be quashed and accordingly, the same is quashed and set aside.

12. It has also come in the evidence that the petitioners had been working in the respondent concern from the year, 2006 till 27.1.2010 i.e till the date of their transfer and they have completed more than 240 days in each calendar year. Further, the perusal of the evidence on record shows that after having received the transfer orders, the petitioners visited the respondent concern for joining but they did not allow the petitioners to join the duties, which act on the part of the respondent, amounts to unfair labour practice. Since, the evidence led by the petitioners remained un-rebutted as the respondent did not appear to contest the case of the petitioners, their evidence is sufficient to prove that they had worked for 240 days in the preceding calendar year under the respondent and their transfer amounted to implied termination of their services. So, prior to their termination, the respondent was under the legal obligation to comply with the provisions of the section 25-F of the Industrial Disputes Act. But, no such compliance was made by the respondent, hence, there is violation of section 25-F of the Act, on the part of respondent. As the result, the termination of petitioners w.e.f. 27.1.2010 on the pretext of transfer to another unit i.e M/s Maja Unipact at Village Khaurni, Tehsil Nalagarh, District Solan by the management of respondent company is illegal and unjustified.

13. In view of the my foregoing discussion and in view of the fact that the termination of the services of the petitioners w.e.f. 27.1.2010 on the pretext of transfer to another unit by respondent is illegal and unjustified, hence, the petitioners are held entitled to be reinstated in service with seniority and continuity at their original place of posting.

14. Now, the question which arises for consideration, before this Court is as to whether the petitioners are entitled to full back wages as contended by the learned counsel for the petitioners. In (2009) 1 SCC 20, Kanpur Electricity Supply Company Limited Vs. Shamim Mirza, the Hon'ble Supreme Court has held that once the order of termination of services of an employee is set- aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla that full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

15. The petitioners were under an obligation to prove by leading cogent evidence that they were not gainfully employed after the termination of their services. The initial burden is on the

workman/employee to show that he was not gainfully employed as held by the Hon'ble Apex Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another Vs. S.C Sharma that:

> "16……..When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim……."

16. In the present case, the petitioners have failed to discharge their burden by placing any concrete and satisfactory material on record that they were not gainfully employed after their termination/disengagement. Therefore, in view of the entire evidence, on record, coupled with the rulings (supra), I have no hesitation in holding that the petitioners are not entitled to any back-wages.

17. As a sequel to my above discussion, the claim of the petitioners succeed and is hereby allowed with the result, the petitioners are ordered to be reinstated in service with seniority and continuity at their original place of posting. However, the petitioners are not entitled to any back-wages and as such the reference is ordered to be answered in favour of the petitioners and against the respondent. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 29th Day of July, 2016.

(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P).

Ref. No. 37 of 2013.

Instituted on. 10.6.2013.

Decided on 30.7.2016.

Laxmikant Tiwari S/o Shri S.D Tiwari, C/o Shri Pawan Kumar Kashyap S/o Shri Mam Chand R/o Village Majra, Tehsil Paonta Sahib, District Sirmour, HP. . .*Petitioner.*

Vs.

The Management/occupier M/s Carlsberg India Pvt. Ltd., Village Tokyon, Tehsil Paonta Sahib, District Sirmour, HP. . .*Respondent.*

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri Niranjan Verma, Advocate.

For respondent: Shri S. Kaushal, Advocate.

AWARD

The following reference has been sent by the appropriate government for adjudication:

> **Whether retirement of Shri Laxmikant Tiwari S/o Shri S.D Tiwari C/o Shri Pawan Kumar Kashyap S/o Shri Mam Chand R/o Village Majra Tehsil Paonta Sahib District Sirmour, HP by the Management /occupier M/s Carlsberg India Pvt. Ltd., Village Tokyon, Tehsil Paonta Sahib District Sirmour HP w.e.f. 31.12.2010 on attaining the age of 58 years is unjustified? If yes, what relief of service benefits the above worker is entitled to from the above management?"**

2. Briefly, the case of the petitioner is that he was working as an operator with the respondent and was getting monthly salary of ₹ 17,700/- and worked till 31.12.2010 on which date he was relieved/discharged from the service at the age of 58 years whereas as per the instruction/notification of the government, the age of retirement for the workers is 60 years and even there is no standing orders in the respondent establishment. It is further stated that some of the workers are working in the respondent establishment even in the age of more than 60 years and some workers have been retired at the age of 60 years and only one or two workers were relieved from the service before the age of 60 years. The petitioner was not given bonus, benefits of LTA, 22 days earned leave, 14 days sick leave casual leave for 7 days and increment for the year, 2011 and 2012 which comes to ₹ 1600/- and 1800/- respectively. The respondent management in connivance with some leaders of the union got some agreement signed which is never endorsed by the workers union and as such the retirement of the petitioner by the respondent management w.e.f. 31.12.2010 on attaining the age of 58 years is illegal and unjustified. Against this back-drop the petitioner has prayed that his retirement w.e.f. 31.12.2010 be declared illegal and he be paid all service benefits along-with wages upto the age of 60 years.

3. By filing reply, the respondent had contested the claim of the petitioner wherein legal objections had been taken that the retirement is eventuality of employment and age was settled in terms of settlement dated 30.3.2009, when the factory was taken over and the reference is not competent. On merits, it has been asserted that the petitioner was getting his last wages as ` 17409/- and his designation was senior operator and in his bio-data his date of birth was mentioned as 15.12.1952 and as such he was rightly retired from service on attaining the age of 58 years as the age of retirement is fixed as 58 years in terms of settlement. It is denied that the age of retirement was settled or fixed as 60 years. It is further asserted that it is the prerogative of the management to extend the age of retirement and employee cannot seek as a matter of right to work beyond 58 years. The petitioner in terms of his application, sought LTA adjustment for the year, 2010 and as such the benefits accruing out of LTA have already been disbursed and no amount towards LTA is due to the petitioner and the payment of earned leave was allowed as per the provisions of legislation and sick leave and casual leave cannot be got enchased but can only be availed on the eventuality of employee being sick. It is also asserted that the increments of the year, 2011 and 2012 is not subject matter of reference and even the dispute does not fall within the ambit of section 2 (oo) of the Industrial Disputes Act, 1947 (hereinafter referred to as Act). The respondent prayed for the dismissal of the claim petition.

4. Rejoinder not filed. Pleadings of the parties gave rise to the following issues which were struck on 10.1.2014.

1. Whether the retirement of the petitioner w.e.f. 31.12.2010 on attaining the age of 58 years is unjustified as alleged? . .*OPP.*

2. If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? . .*OPR.*

3. Whether the petition is not legally competent/maintainable as alleged? . .*OPR.*

4. Relief.

5. Besides having heard the learned counsel for the parties, I have also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1	No.
Issue no.2	Becomes redundant.
Issue no.3	No.
Relief.	Reference answered in favour of the respondent and against the petitioner.

Reasons for findings.

Issues no.1 .

7. Learned Counsel for the petitioner contended that the petitioner was illegally relieved/discharged from service on attaining the age of 58 years whereas the age of retirement for the workers was 60 years. He further contended that the persons who retired at the age of 58 years were given all the benefits upto the age of 60 years whereas the petitioner was deprived of such benefits.

8. On the other hand, Ld. counsel for the respondent contended that the petitioner was legally retired from service at the age of 58 years in terms of settlements Ex. RW-1/B and Ex. RW- 1/C arrived at between the management and workers union and all the benefits have been given to him.

9. To prove his case, the petitioner examined three PWs. Petitioner stepped into the witness box as PW-1 to depose that he was engaged in the year, 1997 as senior operator and he was retired by the company w.e.f. 31.12.2010 at the age of 58 years. His last drawn monthly salary was ₹ 17,700/ and their retirement age was 60 years whereas he was retired from service at the age of 58 years. There are no standing orders of the respondent company, hence the provisions of Industrial Employment (Standing Orders), Rules 1973 are applicable to the establishment of respondent company according to which the age of retirement was fixed as 60 years. Ex. PW-1/A is the copy of demand notice. At the time of his retirement, bonus, LTA and encashment of leaves i.e casual leave, sick leaves and earned leaves and increments for the years, 2011 and 2012 amounting to ₹ 1600 and ₹ 1800/- were not paid to him. The workers namely Darshan Singh and Om Prakash, who were also retired at the age of 58 years were paid all the benefits upto 60 years before the Conciliation Officer. He prayed that the benefits for two years i.e upto 60 years be granted in his favour. In cross-examination, he admitted that there was a union of workers in the factory. He denied that he was receiving the benefits as per the settlement arrived at between management and workers union. He identified his signatures on Ex. R-1, Ex. R-2, Ex. R-

3 and Ex. R-4. He denied that it was made known to him that his retirement age was 58 years. He admitted that when he was retired, the employees of the company were also being retired at the age of 58 years. He denied that the settlements mark A and mark B are binding upon him. He admitted that he had raised the demand notice after retirement.

10. PW-2 Shri Maha Singh has stated that he was working with the respondent company and that out of three retired workers, two were given salary upto the age of 60 years whereas, the petitioner was not granted the benefits upto 60 years, who retired at the age of 58 years. In cross- examination, he admitted that settlements in the year, 2009 and on 28.4.2010 had been arrived at between the workers union and management. He denied that the settlements are binding upon the parties and as per the settlement dated 30.3.2009, the age of retirement was fixed as 58 years and similarly as per settlement dated 28.4.2010, the retirement age was fixed as 58 years.

11. PW-3 Shri Pawan Kumar the President of Carlsberg Karamchari Union stated that he remained the President of the Him Neel Brewery Employees Union w.e.f. 2000-2006. In the year, 2007, Carlsberg India Pvt. Ltd. took over Him Neel Brewery and he remained the member of the executive committee of the union of respondent company till 2012 and no settlement Ex. RW-1/B dated 30.3.2009 was executed and the signatories to Ex. RW-1/B are not the workers of the respondent company and they are the office bearers of state union of BMS. The settlement Ex. RW-1/B is fabricated. In cross-examination, he admitted that there are two unions in the factory one is under BMS and another is under CITU. He denied that the salary of the workers was paid and increased in terms of the settlement. He denied that he was not the member of any union in the years 2007, 2008 and 2009. He denied that settlement Ex. RW-1/B was executed and benefits flown from the settlement were passed on to every workman.

12. On the contrary, the respondent examined two RWs. RW-1 Shri Surender Sharma, Manager HR tendered his affidavit in evidence wherein he reiterated almost all the averments as made in the reply. In cross-examination, he admitted that the model standing orders of Government of HP are applicable in their establishment. Shri Om Prakash, a worker of their company retired in the year, 2013 at the age of 58 years and he was given all the benefits up to the age of 60 years as the persons who got retired prior to 1.1.2013 were not given the benefits up to the age of 60 years. He admitted that Darshan Singh also retired at the age of 58 years and he was given all the benefits upto the age of 60 years. He denied that settlements Ex. RW-1/B and Ex, RW-1/C have never been arrived at between the workers union and the management. He also denied that the petitioner was illegally retired at the age of 58 years.

13. RW-2 Shri Mukesh Chand, Labour Inspector has stated that the settlement Ex. RW-1/B under section 18 (1) of I.D Act, 1947 was received in their office and settlement Ex. RW-1/C was registered on 10.5.2010 which is duly entered at sr. no. 5, page 24 of settlement register, the copy of which is Ex. RW-2/A. In cross-examination, he stated that there is no record regarding the persons who were the office bears of the Carlsberg India Breweries Employees Union registration no. 912 during the period of May, 2010 and Ex. RW-1/B and Ex. RW-1/C were sent to them by the respondent company. He admitted that the record pertaining to the office bearers of the union is available in their office.

14. I have gone through the respective contentions of the learned counsel for the parties and also closely scrutinized the entire evidence, on record, it is an admitted fact that the date of birth of the petitioner is 15.12.1952 as per the bio-data form Ex. R-2. It is also not disputed that on attaining the age of 58 years the petitioner was relieved from service on 31.12.2010. As per the case of the petitioner, the age of retirement of the workers is 60 years but he was illegally retired at the age of 58 years. However, the case of the respondent is that the age

of retirement was fixed as 58 years in terms of settlement Ex. RW-1/B which was again affirmed in settlement Ex. RW-1/C and the age of retirement was never settled or fixed as 60 years. The perusal of the settlement Ex. RW-1/B dated 30.3.2009 shows that it was to commence from 1.2.2009 and was to remain in force till it was otherwise rescinded by the parties as per the provisions of the Act. Clause -1 of the settlement is reproduced herein as under:

"1. Settlement period.

That it is agreed between the parties that the settlement shall commence from 1.2.2009 and till it is otherwise rescind by the parties as per the provisions of the Act. It is further agreed that workman shall be entitled for all facilities and concessions as specifically agreed in terms of the settlement with the interpretation and purposes duly specified herein. During settlement period no workman/union shall raise any demands through any agency which cast direct/indirect financial impact to the company".

As per clause 11 of the settlement, the retirement age of the workmen has been fixed as 58 years, which is reproduced herein as under:

"11. Retirement age.

A workman shall automatically retire from the service of the company on the last day of the calendar month in which he attains the superannuation age of 58 years."

The aforesaid settlement has been signed by the representatives of the management as well as the authorized representatives of the union. Similarly, as per settlement Ex. RW-1/C, dated 28.4.2010 it was agreed upon between the management and workers union that in terms of the settlement dated 30.3.2009, clauses 2,3, 6, 8 to 12 and 14 shall remain binding on both the parties. Clause no.11 of the settlement dated 30.3.2009 Ex. RW-1/B pertains to the age of retirement as observed hereinabove. Therefore, it has become clear that vide settlement dated 28.4.2010, Ex. RW-1/C also both the parties have agreed that workman shall automatically retire from service on attaining the superannuation age of 58 years.

15. The learned counsel for the petitioner contended that the aforesaid settlements are not binding upon the petitioner as the same have been got signed by the respondent management in connivance with some leaders of the union which was never endorsed either by the workers or by the office bearers of the workers union. However, no cogent and satisfactory evidence has been led by the petitioner to prove that the aforesaid settlements have been got signed by the management in connivance with some leaders of the union. Rather, in cross-examination, the petitioner himself admitted that there was a workers' union in the factory and though initially he was not the member of the union but later-on he became its member. He also admitted that when he stood retired, than at that time the retirement age of the employees of the company was 58 years. PW-2 also admitted that there was a workers union and Shri Dev Raj Sharma etc. were its office bearers. He also admitted that settlements were executed between the workers union and management in the year, 2009 and on 28.4.2010. Though, PW-3 expressed his ignorance about the execution of the settlement dated 30.3.2009 Ex. RW-1/B and stated that signatories to Ex. RW-1/B were not the workers of the company rather they were the office bearers of state union of BMS. However, in cross-examination, he admitted that there are two unions in the factory i.e one under the BMS and another under the CITU and he belongs to the union headed by CITU. However, he is silent about the execution of the settlement dated 28.4.2010 Ex. RW-1/C wherein the age of retirement of a workman has been fixed as 58 years. Therefore, no benefit can be derived by the petitioner from his statement.

16. The further case of the petitioner is that S/shri Om Prakash and Darshan Singh who also got retired from service at the age of 58 years were given the benefits upto the age of 60 years. However, the case of the respondent is that after 31.12.2012, the age of retirement has been fixed as 60 years and prior to 31.12.2012, no employee was retired or given benefits upto the age of 60 years and the retirement age was enhanced as 60 years after 1.1.2013 and S/Shri Om Prakash and Darshan Singh were retired in the year, 2013 and they were given the benefits as per settlement dated 31.12.2012. RW-1, the manager (HR) of the respondent company stated in cross-examination that there were three settlements i.e one in the year, 2009, one in the year, 2010 and one in the year, 2013 and the persons who got retired prior to 1.1.2013, were not given the benefits upto the age of 60 years. S/Shri Om Prakash as well as Darshan Singh retired in the year 2013 and therefore they had been given the benefits upto the age of 60 years. No evidence to the contrary has been led by the petitioner that the aforesaid two persons i.e Om Prakash and Darshan Singh retired from service at the age of 58 years prior to 31.12.2012 and were given the benefits up the age of 60 years. Therefore, it cannot be said that the benefits were extended to the similar situated persons i.e S/Shri Om Prakash and Darshan Singh as contended by the learned counsel for the petitioner.

17. The respondent has also examined RW-2 i.e Labour Inspector who categorically deposed that the settlement Ex. RW-1/C was registered on 10.5.2010 and was duly entered at serial no.5 of page 24 of the register Ex. RW-2/A. Therefore, it has been duly established on record that as per the settlement Ex. RW-1/B dated 30.3.2009, the management and the workers union have specifically agreed that the workman shall automatically retire from service of the company at the age of 58 years which was again affirmed vide settlement Ex. RW-1/C. The parties are bound by the settlements Ex. RW-1/B and Ex. RW-1/C which are well within the preview of law and agreed and accepted by the parties at the relevant time till the expiry of its period. On having once agreed and accepted that, now it does not lie in the mouth of the petitioner that his retirement from service on attaining the age of 58 years is illegal and unjustified. At the time of the retirement of the petitioner settlement Ex. RW-1/C was in operation and therefore as per the same he stood automatically retired from service after attaining the age of 58 years.

18. Therefore, in view of my foregoing discussion and also in view of the fact that once it is settled/agreed by the parties that the age of retirement was 58 years during the relevant period, it cannot be said that the retirement of the petitioner was illegal and unjustified. Accordingly, this issue is decided in favour of the respondent and against the petitioner.

Issue No.2

19. Since, the petitioner has failed to prove issue no.1 above, this issue becomes redundant.

Issue no.3.

20. In support of this issue, no evidence has been led by the respondent. However, the petitioner has filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Relief.

As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioner fails and is hereby dismissed and as such the reference is ordered to be answered in

favour of the respondent and against the petitioner. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 30th day of July, 2016.

(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

ब अदालत श्री जोगिन्दर पटियाल, सहायक समाहर्ता प्रथम श्रेणी, तहसील बमसन स्थित टौणी देवी, जिला हमीरपुर, हि0 प्र0

मिसल नं0 : 21/2016 तारीख दायर : 26–07–2016

उनवानः–श्री राहुल चौहान पुत्र श्री रमेश चौहान, गांव घलोट, तहसील बमसन स्थित टौणी देवी, जिला हमीरपुर, हि0 प्र0।

बनाम

आम जनता

विषयः–प्रार्थना–पत्र बराये दर्ज करने जन्म पैदाईश अन्तर्गत धारा 13(3) अधिनियम 1969.

प्रार्थी श्री राहुल चौहान पुत्र श्री रमेश चौहान, गांव घलोट, तहसील बमसन स्थित टौणी देवी, जिला हमीरपुर, हि0 प्र0 ने इस कार्यालय में प्रार्थना–पत्र इस आशय से पेश किया है कि उसकी जन्म पैदाईश दिनांक 31–10–1996 की है परन्तु उसका पंजीकरण स्थानीय ग्राम पंचायत सिकान्दर में दर्ज नहीं हुआ है। जिसे प्रार्थी ग्राम पंचायत के दर्ज रिकार्ड में जन्म पैदाईश में दर्ज करवाना चाहता है।

अतः इश्तहार राजपत्र के माध्यम से आम जनता को सूचित किया जाता है कि उपरोक्त जन्म तिथि के बारे में किसी को कोई भी उजर/एतराज हो तो वह दिनांक 27–08–2016 को सुबह 11.00 बजे असालतन/वकालतन हाजिर अदालत आकर अपना उजर/एतराज पेश कर सकते हैं। आम जनता की ओर से कोई हाजिर न होने के कारण आम जनता के खिलाफ एक तरफा कार्यवाही अमल में लाई जाएगी।

आज दिनांक 27–07–2016 को मेरे हस्ताक्षर व मोहर सहित अदालत से जारी हुआ।

मोहर। हस्ताक्षरित/–
सहायक समाहर्ता प्रथम श्रेणी,
बमसन स्थित टौणी देवी, जिला हमीरपुर, हि0 प्र0।

In the Court of Ms. Kritika Kulhari, IAS, Marriage Officer-cum-**Sub Divisional Magistrate, Hamirpur (Himachal Pradesh)**

In the matter of :

1. Ankush Kumar aged 22 years s/o Shri Mulakh Raj, r/o Village Thana Tikkar (Tarotu), P.O. Jandru, Tehsil Sujanpur, District Hamirpur (H.P.).
2. Arti aged 19 years d/o Shri Santosh Kumar, r/o Village Jyana, P.O. Kakkar, Tehsil Bamsan at Touni Devi, District Hamirpur . . *Applicants.*

Versus

General Public

Subject:—Notice of the Intended Marriage.

Ankush Kumar and Arti have filed an application under Special Marriage Act, 1954 alongwith affidavit and other documents in the court of undersigned in which they stated that they intend to solemnized marriage within three calendar months.

Therefore, the General Public is hereby informed through this notice that any person who has any objection for this marriage can file the objection personally or in writing before this court on or before 27-08-16. The objection received after 27-08-16 will not be entertained and marriage will be registered accordingly.

Issued today on 27-07-2016 under my hand and seal of the court.

Seal. Sd/-
Marriage Officer-cum-*Sub Divisional Magistrate,*
Hamirpur (H.P.).

In the Court of Ms. Kritika Kulhari, IAS, Marriage Officer-cum-**Sub Divisional Magistrate, Hamirpur (Himachal Pradesh)**

In the matter of :

1. Rohit Sharma aged 25 years s/o Shri Vidya Sagar, r/o House No. 219, Ward No. 3, Partap Nagar, Hamirpur, District Hamirpur (H.P.).
2. Pooja Kaushal aged 24 years d/o Shri Ashwani Kaushal, r/o Village Chhuthwin, P.O. Khawar, Tehsil Bhoranj, District Hamirpur . . *Applicants.*

Versus

General Public

Subject:—Notice of the Intended Marriage.

Rohit Sharma and Pooja Kaushal have filed an application under Special Marriage Act, 1954 alongwith affidavit and other documents in the court of undersigned in which they stated that they intend to solemnized marriage within three calendar months.

Therefore, the General Public is hereby informed through this notice that any person who has any objection for this marriage can file the objection personally or in writing before this court on or before 27-08-16. The objection received after 27-08-16 will not be entertained and marriage will be registered accordingly.

Issued today on 28-07-2016 under my hand and seal of the court.

Seal. Sd/-
Marriage Officer-cum-*Sub Divisional Magistrate,*
Hamirpur (H.P.).

In the Court of Ms. Kritika Kulhari, IAS, Marriage Officer-cum-**Sub Divisional Magistrate, Hamirpur (Himachal Pradesh)**

In the matter of :

1. Vipen Kumar Kaushal aged 53 years s/o Shri Nanak Chand, r/o Village Maserdu, P.O. Didwin Tikkar, Tehsil & District Hamirpur (H.P.) and
2. Vandana Verma aged 37 years d/o Shri Kewal Krishan, r/o Nanak Nagar Jammu. House No. 201, Sector 5, Tehsil & District Jammu (J&K) . . *Applicants.*

Versus

General Public

Subject:—Notice of the Intended Marriage.

Vipen Kumar Kaushal and Vandana Verma have filed an application under Special Marriage Act, 1954 alongwith affidavit and other documents in the court of undersigned in which they stated that they solemnized marriage on 25-03-2016.

Therefore, the General Public is hereby informed through this notice that any person who has any objection for this marriage can file the objection personally or in writing before this court on or before 29-08-16. The objection received after 29-08-16 will not be entertained and marriage will be registered accordingly.

Issued today on 29-07-2016 under my hand and seal of the court.

Seal. Sd/-
Marriage Officer-cum-*Sub Divisional Magistrate,*
Hamirpur (H.P.).

In the Court of Marriage Officer-cum-**Sub Divisional Magistrate, Hamirpur (H.P.)**

In the matter of :

1. Amit Kumar s/o Shri Nanak Chand, Village Hera Nagar, P. O. Karluhi, Tehsil Amb, District Una.

2. Aarti d/o Shri Pratap, V.P.O. Rangar, Tehsil Sujanpur at present Type 1 Forest Colony Hamirpur (Quarter) Tehsil & District Hamirpur . . *Applicants.*

Versus

General Public

Subject.—Proclamation for the registration of Marriage under Section 16 of Special Marriage Act, 1954.

Amit Kumar and Aarti have filed an application alongwith affidavits in the court of undersigned under Section 16 of Special Marriage Act, 1954 that they have solemnized their marriage on 15-05-2016 at Gasota Mandir, Tehsil Hamirpur and they are living as husband and wife since then, hence their marriage may be registered under Special Marriage Act, 1954.

Therefore, the general public is hereby informed through this notice that any person who has any objection regarding this marriage can file the objection personally or in writing before this court on or before 30-08-2016. The objection received after 30-08-2016 will not be entertained and marriage will be registered accordingly.

Issued today on 25-07-2016 under my hand and seal of the court.

Seal. Sd/-
Marriage Officer-cum-*Sub Divisional Magistrate,*
Hamirpur (H.P.).

In the Court of Ms. Kritika Kulhari, IAS, Marriage Officer-cum-**Sub Divisional Magistrate, Hamirpur (Himachal Pradesh)**

In the matter of :

1. Sunil Kumar aged 25 years s/o Shri Daya Nand, r/o Village Balohkar, P.O. Town Bharari, Tehsil Bhoranj, District Hamirpur (H.P.)
2. Sonika Kumari aged 18 years d/o Shri Piar Singh, r/o Village Amarpur, Tehsil Ghumarwin, District Bilaspur . . *Applicants.*

Versus

General Public

Subject:—Notice of the Intended Marriage.

Sunil Kumar and Sonika Kumari have filed an application under Special Marriage Act, 1954 alongwith affidavit and other documents in the court of undersigned in which they stated that they intend to solemnized marriage within three calendar months.

Therefore, the General Public is hereby informed through this notice that any person who has any objection for this marriage can file the objection personally or in writing before this court on or before 29-08-16. The objection received after 29-08-16 will not be entertained and marriage will be registered accordingly.

Issued today on 29-07-2016 under my hand and seal of the court.

Seal. Sd/-
Marriage Officer-cum-*Sub Divisional Magistrate,*
Hamirpur (H.P.).

In the Court of Ms. Kritika Kulhari, IAS, Marriage Officer-cum-**Sub Divisional Magistrate, Hamirpur (Himachal Pradesh)**

In the matter of :

1. Ajay Kumar aged 30 years s/o Shri Chaudhary Ram, r/o Village Chamyola (Kalyana) P.O. Bani, Tehsil Barsar, District Hamirpur (H.P.)

2. Seema Devi aged 28 years d/o Shri Pritam Chand, r/o Village Rail, P.O. Rail, Tehsil Nadaun, District Hamirpur . . *Applicants.*

Versus

General Public

Subject:—Notice of the Intended Marriage.

Ajay Kumar and Seema Devi have filed an application under Special Marriage Act, 1954 alongwith affidavit and other documents in the court of undersigned in which they stated that they solemnized marriage on 14th July, 2016.

Therefore, the General Public is hereby informed through this notice that any person who has any objection for this marriage can file the objection personally or in writing before this court on or before 29-08-16. The objection received after 29-08-16 will not be entertained and marriage will be registered accordingly.

Issued today on 29-07-2016 under my hand and seal of the court.

Seal. Sd/-
Marriage Officer-cum-*Sub Divisional Magistrate,*
Hamirpur (H.P.).

In the Court of Ms. Kritika Kulhari, IAS, Marriage Officer-cum-**Sub Divisional Magistrate, Hamirpur (Himachal Pradesh)**

In the matter of :

1. Vishal Gupta aged 35 years s/o Shri Sudhir Kumar, r/o Ward No. 3 Partap Nagar, Hamirpur (H.P.) and

2. Reena Kumari aged 31 years d/o Late Shri Kartar Chand, r/o Village Gori, P.O. Kulehra, Tehsil Barsar, District Hamirpur . . *Applicants*.

Versus

General Public

Subject:—Notice of the Intended Marriage.

Vishal Gupta and Reena Kumari have filed an application under Special Marriage Act, 1954 alongwith affidavit and other documents in the court of undersigned in which they stated that they solemnized marriage on 25-07-2016.

Therefore, the General Public is hereby informed through this notice that any person who has any objection for this marriage can file the objection personally or in writing before this court on or before 30-08-16. The objection received after 30-08-16 will not be entertained and marriage will be registered accordingly.

Issued today on 30-07-2016 under my hand and seal of the court.

Seal. Sd/-

Marriage Officer-cum-*Sub Divisional Magistrate,*
Hamirpur (H.P.).

ब अदालत श्री काली दास, नायब तहसीलदार एवं सहायक समाहर्ता द्वितीय श्रेणी, उप–तहसील धीरा, जिला कांगड़ा (हि0 प्र0)

केस नं0 : 37 / 2015 तारीख पेशी : 26–08–2016 किस्म मुकद्दमा : तकसीम

शीर्षक.–

अर्जुन दास मु0 खास बनाम जीवन कुमार आदि

Publication U/O, 5 rule 20 of CPC.

मुकद्दमा : तकसीम जेर धारा 123 हि0 प्र0 भू–राजस्व अधिनियम, 1954 बाबत भूमि खाता नं0 139, खतौनी नं0 256 ता 260, खसरा कित्ता–15, रकबा तादादी 0–29–91 है0 स्थित महाल धीरा, मौजा धीरा, उप–तहसील धीरा, जिला कांगड़ा, हि0 प्र0।

उपरोक्त भूमि की तकसीम की मिसल इस न्यायालय में विचाराधीन है जिसमें प्रतिवादीगण जो निम्नलिखित हैं.––

5. रतन चंद पुत्र खजाना, 6. पवना देवी पत्नी रमेश चंद 7. वख्शी चन्द पुत्र, 8. रजिन्दर कुमार पुत्र, 9. औकार चंद पुत्र केसरी, 10 ठाकर दास पुत्र दलपत, 11. गगन सिंह पुत्र नौल, निवासी मतहेड नौरा व बाकी सभी निवासी महाल व मौजा धीरा, उप–तहसील धीरा, जिला कांगड़ा, हि0 प्र0 को समन जारी किये गये लेकिन तामील तसल्लीवख्स नहीं हो पाई। अतः उक्त न्यायालय को यह विश्वास हो चुका है कि प्रतिवादीगण की तामील साधारण तरीके से नहीं हो सकती है। अतः उक्त प्रतिवादीगण को इस इश्तहार राजपत्र के माध्यम से सूचित किया जाता है कि वह दिनांक 26–08–2016 को इस न्यायालय में प्रातः 10 बजे असालतन या

वकालतन अधोहस्ताक्षरी की अदालत में हाजिर आकर मुकद्दमा की पैरवी करें। हाजिर न आने की सूरत में उनके खिलाफ एक तरफा कार्यवाही अमल में लाई जाएगी। इसके उपरान्त कोई भी उजर या एतराज काबले समायत नहीं होगा।

आज दिनांक 25–07–2016 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर। हस्ताक्षरित/–
सहायक समाहर्ता द्वितीय श्रेणी,
उप–तहसील धीरा, जिला कांगड़ा।

————————

ब अदालत नायब तहसीलदार एवम् कार्यकारी दण्डाधिकारी, तहसील खुण्डियां, जिला कांगड़ा (हि0 प्र0)

केस नं0 : 7/NT/2016/Misc. तारीख पेशी : 26–08–2016

श्री वलजीत सिंह पुत्र श्री देश राज, निवासी गांव चौकी, डाकघर टीहरी, तहसील खुण्डियां, जिला कांगड़ा, हिमाचल प्रदेश।

बनाम

आम जनता

उनवान मुकदमा.–जेरे धारा 13(3) जन्म एवम् मृत्यु पंजीकरण अधिनियम, 1969 के तहत जन्म तिथि पंजीकरण।

नोटिस बनाम :–

प्रार्थी श्री वलजीत सिंह पुत्र श्री देश राज, निवासी गांव चौकी, डाकघर टीहरी, तहसील खूण्डियां, जिला कांगड़ा (हि0 प्र0) ने स्वयं उपस्थित होकर प्रार्थना–पत्र प्रस्तुत किया कि उसका जन्म दिनांक 1–01–1992 को हुआ है, का पंजीकरण गलती से ग्राम पंचायत टीहरी के अभिलेख में दर्ज न हो सका है। अतः जन्म तिथि का पंजीकरण ग्राम पंचायत टीहरी के अभिलेख में दर्ज किया जाये।

अतः सर्वसाधारण को सुनवाई हेतु बजरिये इश्तहार व मुस्त्री मुनादी द्वारा सूचित किया जाता है कि इस सम्बन्ध में किसी प्रकार का उजर एतराज हो तो वह दिनांक 26–08–2016 को असालतन व वकालतन पेश होकर अपना एतराज दर्ज करवा सकता है। उसके उपरान्त कोई भी उजर एतराज जेर समायत न होगा तथा श्री वलजीत सिंह पुत्र श्री देश राज की जन्म तिथि का पंजीकरण दिनांक 1–01–1992, जेरे धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969 के तहत ग्राम पंचायत टीहरी के अभिलेख में दर्ज करने के आदेश पारित कर दिये जायेंगे।

आज दिनांक 30–07–2016 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर। हस्ताक्षरित/–
नायब तहसीलदार एवम् कार्यकारी दण्डाधिकारी,
तहसील खुण्डियां, जिला कांगड़ा (हि0 प्र0)।

ब अदालत नायब तहसीलदार एवम् कार्यकारी दण्डाधिकारी, तहसील खुण्डियां, जिला कांगड़ा (हि0 प्र0)

केस नं0 : 8/NT/2016/Misc. तारीख पेशी : 26–08–2016

श्री राकेश कुमार पुत्र श्री अमर सिंह, निवासी गांव व डाकघर खुण्डियां, तहसील खुण्डियां, जिला कांगड़ा, हिमाचल प्रदेश।

बनाम

आम जनता

उनवान मुकदमा.–जेरे धारा 13(3) जन्म एवम् मृत्यु पंजीकरण अधिनियम, 1969 के तहत जन्म तिथि पंजीकरण।

नोटिस बनाम :–

प्रार्थी श्री राकेश कुमार पुत्र श्री अमर सिंह, निवासी गांव व डाकघर खुण्डियां, तहसील खुण्डियां, जिला कांगड़ा (हि0 प्र0) ने स्वयं उपस्थित होकर प्रार्थना–पत्र प्रस्तुत किया कि उसकी माता श्रीमती संध्या देवी की मृत्यु दिनांक 24–01–2008 को हुई है, का पंजीकरण गलती से ग्राम पंचायत खुण्डियां के अभिलेख में दर्ज न हो सका है। अतः मृत्यु तिथि का पंजीकरण ग्राम पंचायत खुण्डियां के अभिलेख में दर्ज किया जाये।

अतः सर्वसाधारण को सुनवाई हेतु बजरिये इश्तहार व मुस्त्री मुनादी द्वारा सूचित किया जाता है कि इस सम्बन्ध में किसी प्रकार का उजर एतराज हो तो वह दिनांक 26–08–2016 को असालतन व वकालतन पेश होकर अपना एतराज दर्ज करवा सकता है। उसके उपरान्त कोई भी उजर एतराज जेर समायत न होगा तथा श्री राकेश कुमार पुत्र श्री अमर सिंह की माता स्व0 श्रीमती संध्या देवी की मृत्यु तिथि का पंजीकरण दिनांक 24–01–2008, जेरे धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969 के तहत ग्राम पंचायत खुण्डियां के अभिलेख में दर्ज करने के आदेश पारित कर दिये जायेंगे।

आज दिनांक 30–07–2016 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर। हस्ताक्षरित / –
नायब तहसीलदार एवम् कार्यकारी दण्डाधिकारी,
तहसील खुण्डियां, जिला कांगड़ा (हि0 प्र0)।

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ब अदालत सहायक समाहर्ता द्वितीय श्रेणी, हारचकियां, जिला कांगड़ा (हि0 प्र0)

कुमारी मोनिका चौधरी पुत्री प्रशोतम लाल, निवासी महाल वटवल्ला, मौजा प्रगोड, उप–तहसील हारचकियां, जिला कांगड़ा, हि0 प्र0।

बनाम

आम जनता

विषय.––प्रार्थना पत्र सेहत नाम।

कुमारी मोनिका चौधरी पुत्री प्रशोतम लाल, निवासी महाल वटवल्ला, मौजा प्रगोड, उप–तहसील हारचकियां ने इस अदालत में प्रार्थना पत्र मय ब्यान हल्फी गुजारा है कि राजस्व अभिलेख पटवार वृत्त मनेई में नाम मोनिका देवी दर्ज है जो कि सही नहीं है सही नाम मोनिका चौधरी पुत्री प्रशोतम लाल है।

अतः इस इश्तहार राजपत्र के माध्यम से सर्वसाधारण को सूचित किया जाता है कि यदि किसी व्यक्ति को कोई उजर व एतराज हो तो वह दिनांक 05–09–2016 को प्रातः 10.00 बजे पेश कर सकता है बाद पेशी उजर व एतराज नहीं सुना जायेगा तथा राजस्व अभिलेख में नाम दरुस्ती मोनिका देवी उर्फ मोनिका चौधरी पुत्री प्रशोतम लाल के आदेश दे दिये जायेंगे।

आज दिनांक 01–08–2016 को मेरे हस्ताक्षर व अदालत मोहर से जारी हुआ।

मोहर।

हस्ताक्षरित / –
सहायक समाहर्ता द्वितीय श्रेणी,
हारचकियां।

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In the Court of Shri Keshav Ram, Executive Magistrate (Tehsildar), Kasauli, District Solan, H. P.

Case No. : 07/ 2016 Date of Institution : 20-07-2016 Date of Decision/ Pending for : 26-08-2016

Shri Amit Kumar son of Shri Roshan Lal and Smt. Meenu daughter of Shri Gurbachan Singh presently wife of Shri Amit Kumar, both residents of House No. 28, Ettawa Kasauli Cantt., Tehsil Kasauli, District Solan, H. P. . . *Applicants.*

Versus

General Public

Application U/S 8(4) of the H.P. Registration of Marriages Act, 1996.

Proclamation

Shri Amit Kumar son of Shri Roshan Lal and Smt. Meenu daughter of Shri Gurbachan Singh presently wife of Shri Amit Kumar, both residents of House No. 28, Ettawa Kasauli Cantt., Tehsil Kasauli, District Solan, H. P. have filed a joint application under section 8(4) of the H.P. Registration of Marriages Act, 1996 stating therein that their marriage was solemnized on 19-04-2009 as per Hindu rites but their marriage could not be entered in the records of Cantt. Board Kasauli, Tehsil Kasauli within stipulated period. They have prayed for issuing necessary orders to the CEO, Cantt. Board Kasauli, Tehsil Kasauli for entering the above marriage in the records.

Therefore, by this proclamation the General Public is hereby informed that any person having objection regarding registering the marriage of Shri Amit Kumar and Smt. Meenu, may file their objection in this court on or before 26-08-2016, failing which no objection shall be entertained.

Given under my hand and seal on this 20th day of July, 2016.

Seal.

KESHAV RAM,
Executive Magistrate (Tehsildar),
Kasauli, District Solan, H. P.

In the Court of Shri Keshav Ram, Executive Magistrate (Tehsildar), Kasauli, District Solan, H. P.

Case No. : 33/ 2016 Date of Institution : 22-7-2016 Date of Decision/ Pending for : 26-8-2016

Shri Tara Chand son of Shri Ram Saran, resident of Village & PO Goela, Tehsil Kasauli, District Solan, H. P. . . *Applicant.*

Versus

General Public

Application U/S 13(3) of the Birth and Death Registration Act, 1969.

Proclamation

Shri Tara Chand son of Shri Ram Saran, resident of Village & PO Goela, Tehsil Kasauli, District Solan, H. P. has filed an application under section 13(3) of the Birth & Death Registration Act, 1969 stating therein that his son namely Hemant Kumar was died on 01-01-2013 at Village & PO Goela, Tehsil Kasauli, District Solan, H. P., but his death could not be registered in the death records of Gram Panchayat Goela, Tehsil Kasauli within stipulated period. He prayed for passing necessary orders to the Secretary, GP Goela, Tehsil Kasauli for entering the same.

Therefore, by this proclamation the General Public is hereby informed that any person having objection regarding registering the death of Hemant Kumar son of applicant may file their objections in this court on or before 26-08-2016, failing which no objection shall be entertained.

Given under my hand and seal on this 22nd day of July, 2016.

Seal.

KESHAV RAM,
Executive Magistrate (Tehsildar),
Kasauli, District Solan, H. P.

नियन्त्रक, मुद्रण तथा लेखन सामग्री, हिमाचल प्रदेश, शिमला–5 द्वारा मुद्रित तथा प्रकाशित
इलेक्ट्रॉनिक हस्ताक्षरित राजपत्र, वैबसाइट http://rajpatrahimachal.nic.in पर उपलब्ध है एवम् ऑनलाइन सत्यापित किया जा सकता है